

Federal Register

WEDNESDAY, MAY 3, 1978



highlights

SUNSHINE ACT MEETINGS 64983

"THE FEDERAL REGISTER—WHAT IT IS AND HOW TO USE IT"

Reservations for May are being accepted for the free Friday workshops on how to use the FEDERAL REGISTER. The sessions are held at 1100 L Street NW., Washington, D.C. in room 9409 from 9 to 11:30 a.m.

Each session includes a brief history of the FEDERAL REGISTER, the difference between legislation and regulations, the relationship of the FEDERAL REGISTER to the Code of Federal Regulations, the elements of a typical FEDERAL REGISTER document, and an introduction to the finding aids.

FOR RESERVATIONS call: Martin V. Franks, Workshop Coordinator, 202-523-3517.

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The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR notice 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
DOT/NHTSA	USDA/APHIS		DOT/NHTSA	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
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DOT/OPSO	USDA/REA		DOT/OPSO	USDA/REA
	CSC			CSC
	LABOR			LABOR
	HEW/ADAMHA			HEW/ADAMHA
	HEW/CDC			HEW/CDC
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Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

ATTENTION: For questions, corrections, or requests for information please see the list of telephone numbers appearing on opposite page.

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New England Fishery Management Council's Scientific and Statistical Committee, Woods Hole, Mass. (open), 5-10-78. 17025; 4-21-78

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NOTE: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of PUBLIC LAWS.

[Last listing: May 1, 1978]

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rules and regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

[3410-02]

Title 7—Agriculture

CHAPTER X—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; MILK), DEPARTMENT OF AGRICULTURE

[Milk Order No. 41]

PART 1004—MILK IN THE MIDDLE ATLANTIC MARKETING AREA

Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This order suspends an order provision affecting the regulatory status of fluid milk distributing plants. The suspension was requested by two cooperative associations to continue the association of producers' milk with the order. The suspension is for the period April through August 1978.

EFFECTIVE DATE: May 3, 1978.

FOR FURTHER INFORMATION CONTACT:

Martin J. Dunn, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, 202-447-7311.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Notice of proposed suspension—issued April 10, 1978, published April 17, 1978 (43 FR 16185).

This suspension order is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and of the order regulating the handling of milk in the Middle Atlantic marketing area.

Notice of proposed rulemaking was published in the FEDERAL REGISTER (43 FR 16185) concerning a proposed suspension of certain provisions of the order. Interested persons had an opportunity to comment on the proposed suspension in writing. Six cooperatives and a proprietary handler filed comments supporting the suspension. A proprietary handler opposed the suspension.

After consideration of all relevant material, including the proposal set forth in the aforesaid notice, the comments received and other available information, it is found and determined that for the months of April through August 1978, the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1004.7(a) the words "not less than 50 percent".

STATEMENT OF CONSIDERATION

The suspension will make inoperative for the period April through August 1978 the provision that at least 50 percent of the receipts of milk at a pool distributing plant be disposed of as Class I milk.

The suspension was requested by Maryland Cooperative Milk Producers Association, Inc., and Lehigh Valley Cooperative Farmers. The suspension is supported by four other cooperative associations and a proprietary handler. A proprietary handler opposed the suspension.

Substantially increased milk production by Middle Atlantic producers is not being matched by Class I sales. This will jeopardize the pooling of some distributing plants during the April through August period. This will occur because less than 50 percent of the receipts at such plants would be disposed of as Class I milk. The suspension will remove this percentage of distribution as a requirement for pooling a distributing plant.

There is every likelihood that milk production for the market will increase in the months ahead, without much prospect that Class I sales will strengthen materially.

Specific instances reflecting general marketing conditions were cited by two cooperative associations and a proprietary handler.

The Maryland Cooperative Milk Producers supplies Class I milk to distributing plants serving the Baltimore segment of the market. The continuing impact of substantially lower Class I sales that resulted when a major customer closed a distributing plant last year will jeopardize the pooling of some of the plants in the coming months of heavy milk production. This will occur because the reserve milk resulting from the reduced Class I sales, and the increased milk production, must be associated with distributing plants for pooling.

The Lehigh Valley Cooperative Farmers distributes fluid milk through its own distributing plant. Increased milk production from its producers will jeopardize the pooling of the plant because Class I sales are not matching the increased production.

Milk deliveries by producers supplying a pool distributing plant operated by a proprietary handler have increased. The handler's Class I sales have decreased, and he anticipates further decline in Class I sales during the period April through August, including those resulting from school closings. Without the suspension, the handler anticipates that his pool distributing plant may shortly fail to qualify for pooling. This would jeopardize the producer status of dairy farmers who have regularly supplied his plant.

A proprietary handler opposed the suspension because one of the cooperatives that proposed it is soliciting additional producers. Apparently, he believes that resulting increased milk volume may be jeopardizing the continued pool status of the cooperative's distributing plant. In his view, the suspension should not be made to accommodate this situation.

Comments that were filed in response to the notice of proposed suspension established that the problem of continued pooling for some distributing plants during the months of April through August is more widespread than the opposing handler indicated. Such problem is attributable primarily to substantially increased milk production for the market that is not being matched by increased Class I sales.

It is concluded that the suspension is necessary to assure that producers who are regular suppliers of milk for the fluid market will continue to have their milk pooled under the order during the period April through August 1978.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that the suspension does not require of persons affected substantial or extensive preparation prior to the effective date, and notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this suspension.

Therefore, good cause exists for making this order effective upon publication in the FEDERAL REGISTER.

It is therefore ordered, That the aforesaid provisions of the order are hereby suspended for the months of April through August 1978.

(Secs. 1-19, 48 Stat. 31 as amended (7 U.S.C. 601-674).)

Effective date: May 3, 1978.

Signed at Washington, D.C., on April 28, 1978.

JERRY C. HILL,
Deputy Assistant Secretary.

[FR Doc. 78-12028 Filed 5-2-78; 8:45 am]

[3410-05]

CHAPTER XIV—COMMODITY CREDIT CORPORATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

PART 1438—NAVAL STORES

Subpart—1978 Crop Gum Naval Stores Loan Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule provides the Commodity Credit Corporation's ("CCC") determinations and regulations concerning a loan program for the 1978-crop gum naval stores, which is authorized by the Agricultural Act of 1949, as amended. The loan program stabilizes market prices and protects producers, processors, and consumers. The program enables producers to obtain price support on 1978-crop gum naval stores.

DATE: Effective May 3, 1978.

ADDRESS: Producer Associations Division, Agricultural Stabilization and Conservation Service, P.O. Box 2415, U.S. Department of Agriculture, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT:

Roger Cooley ASCS, 202-447-7405.

SUPPLEMENTARY INFORMATION: On February 6, 1978, CCC published a notice in the FEDERAL REGISTER (43 FR 4865) that CCC proposed to make determinations and issue regulations concerning a loan program for 1978-crop gum naval stores. No purchase program was under consideration. All comments received from the American Turpentine Farmers Association and producers were favorable.

Accordingly, the regulations appearing in this subpart, which were published at 42 FR 43961, are revised to read as follows, effective as to 1978-crop gum naval stores. The material previously appearing in this subpart remains in full force and effect as to

the crop years to which it was applicable.

Subpart—1978 Gum Naval Stores Loan Program

Sec.

- 1438.1636 General statement and administration.
- 1438.1637 Definitions.
- 1438.1638 Loan to ATFA.
- 1438.1639 Advances to producers.
- 1438.1640 Rate of advance to producers.
- 1438.1641 Maturity of loan.
- 1438.1642 Redemption by ATFA.
- 1438.1643 Net gains.
- 1438.1644 Right of CCC upon maturity.
- 1438.1645 Personal liability.

AUTHORITY: Sec. 4(d), 62 Stat. 1070 (15 U.S.C. 714 b); sec. 5(a), 62 Stat. 1072 (15 U.S.C. 714c), and secs. 301, 401, 63 Stat. 1053, 1054 (7 U.S.C. 1421, 1447).

Subpart—1978 Gum Naval Stores Loan Program

§ 1438.1636 General statement and administration.

CCC will make loans available to producers of gum naval stores during the calendar year 1978 through the American Turpentine Farmers Association (herein referred to as ATFA), under the terms and conditions described in these regulations. The Producer Associations Division, ASCS, will supervise the administration of the program.

§ 1458.1637 Definitions.

(a) "Eligible producer" means, a producer who: (1) Is a member of ATFA in good standing under membership requirements approved by CCC (no producer who is otherwise eligible may be excluded from membership in ATFA), (2) is a participant in the Naval Stores Conservation Program for 1978 or otherwise follows one or more forestry conservation practices established by State and Federal Forestry services, as determined by ATFA, (3) has made satisfactory arrangements to pay an indebtedness to the U.S. Department of Agriculture or any of its agencies, as evidenced by the debt records maintained by the Agricultural Stabilization and Conservation County Committees of the U.S. Department of Agriculture, and (4) has executed, and has not breached his obligations under, the Producer's Marketing Agreement (ATFA Form 1-1978), or any other similar agreement.

(b) "Eligible naval stores" means eligible rosin and rosin content in eligible oleoresin.

(c) "Eligible oleoresin" means oleoresin (1) which was produced in 1978 in the United States by an eligible producer, (2) which is free and clear from all liens and encumbrances, (3) the rosin content in which has not been previously pledged for a loan under this or any similar program, and in which the beneficial interest is and

always has been in the producer, and (4) which will yield rosin of the grades and quality prescribed in paragraph (d) of this section.

(d) "Eligible rosin" means gum rosin which (1) was processed by the Olustee or similar method from eligible oleoresin, (2) grades "K" or better, (3) is free and clear from all liens and encumbrances, (4) has not previously been pledged for a loan under this or any similar program, and in which the beneficial interest is and always has been in the producer: *Provided*, that, when a producer's eligible oleoresin was commingled in the processing operation with oleoresin produced in the United States by other producers, the rosin tendered for advance by the producer, as representing the processed equivalent of his eligible oleoresin, will be deemed to be, if otherwise eligible, rosin produced by such producer, (5) is packed to a net weight of 517 pounds, in eligible metal drums, (6) is transparent, (7) is free from visible foreign materials and contains no extraneous matter resulting from chemical or other treatment of the rosin, or of the oleoresin or the trees from which it came, and (8) conforms as to softening point to not less than Federal Specifications LLL-R-626b, wit: 158° Fahrenheit (American Society for Testing Materials No. E-28-67). Rosin must be federally graded, inspected and weighted or the weights checked by Federal Inspectors employed or licensed by CCC.

(e) "Eligible metal drums" means drums conforming to the specifications for metal drums approved by CCC, obtainable from and on file in the office of ATFA.

§ 1438.1638 Loan to ATFA.

Under a Loan Agreement, CCC will make a loan to ATFA which will enable ATFA to make loan advances to eligible producers on eligible naval stores. As security for such loan, ATFA will pledge such naval stores to CCC; CCC has the right to establish a maximum aggregate disbursement at any time upon written notice to ATFA, but no such limitation shall apply with respect to naval stores tendered to ATFA by producers prior to such notice. The loan will be in an amount equal to (a) the amount of the loan advances made by ATFA to producers, except that the loan will be made only on full drums of eligible naval stores, (b) the administrative and operating expenses, approved by CCC, incurred by ATFA in making advances available to producers, and in the handling, preservation, and redemption of pledged naval stores, and (c) storage charges or other charges on pledged naval stores up to the time of acquisition of title thereto by CCC. The loan by CCC to ATFA shall bear interest at the rate of six (6) percent

per annum or such other rate as may be determined applicable by CCC to 1978 loans.

§ 1438.1639 Advances to producers.

ATFA will make advances to eligible producers on eligible naval stores only when such naval stores have been (a) processed (except where CCC and ATFA determine that unprocessed rosin content in oleoresin may be offered for advance), (b) placed in storage in the custody of an approved warehouseman who has entered into and is fully complying with a Warehouse Agreement (ATFA Form 2-19750) with ATFA, or in the custody of ATFA acting under a Storage Agreement with CCC, and (c) offered for an Advance on a Producer's Offer (ATFA Form 4), the date of which, unless a first offer and dated not later than September 1, 1978, shall be not later than thirty days from the date of delivery of eligible oleoresin to a processor, but in no event later than December 31, 1978, by the producer of the oleoresin, the rosin content of which or processed rosin from which has been so placed in storage. No warehouseman will be authorized to store pledged unprocessed rosin except upon approval by CCC of ATFA's written recommendation therefor and written demonstration by ATFA that there exists an immediate and substantial need for such storage. If there are any liens or encumbrances on the naval stores offered for advance, proper waivers are required on a Lienholder's Waiver and Agreement (ATFA Form 3). All processing charges, including the cost of eligible metal drums for rosin, and storage and other warehouse charges to the date of tender for advance, will be borne by the producer.

§ 1438.1640 Rate of Advance to producers.

ATFA will make advances to eligible producers on eligible rosin or rosin content only, based on the support level of \$65.00 per standard barrel (435 lbs. net weight each) of oleoresin (crude pine gum), processed basis. Although no advance is made on turpentine, an allowance is made for the estimated 1978 market value of the turpentine content in a barrel of oleoresin in determining the advance rate for rosin or rosin content. The loan rates on rosin are \$21.40 for grade WG, \$22.20 for grades X and WW, \$21.00 for Grade N, \$20.60 for Grade M, and \$20.00 for Grade K, per hundred pounds net, packed in eligible metal drums. CCC reserves the right to reduce rosin loan rates if the actual turpentine market price during 1978, when added to such rosin loan rates, results in a support level for crude pine gum in excess of 90 percent of parity. Also, CCC may increase or decrease grade premiums and discounts

whenever market conditions warrant. ATFA will make advances to any eligible producer on the basis of the applicable advance rates in effect on the date of the applicable Producer's Offer.

§ 1438.1641 Maturity of loan.

The loan made by CCC to ATFA will be due and payable upon demand.

§ 1438.1642 Redemption by ATFA.

ATFA's right to redeem naval stores pledged by ATFA to CCC shall be subject to the terms and conditions of the Loan Agreement and any amendments thereto. Redemption shall be made upon payment of the redemption cost. The redemption cost will be determined by CCC and will be the amount outstanding under the Loan Agreement, including any unpaid accrued expenses and charges, plus interest applied ratably to the naval stores to be redeemed. Any naval stores redeemed will not be thereafter eligible for loan.

§ 1438.1643 Net gains.

ATFA will disburse in cash on a fair and equitable basis to participating producers all net gains, less cost of disbursement, resulting from ATFA's sale of redeemed naval stores, unless a disposition other than cash disbursement has been approved by CCC. For example, when net gains are insufficient to justify disbursement expense, ATFA may upon request to and approval of CCC, utilize such net gains for and in behalf of all of its producer member.

§ 1438.1644 Right of CCC upon maturity.

Upon maturity and nonpayment of the loan, CCC will take title to any unredeemed naval stores, without a sale thereof, and CCC will have no obligation to pay or account to ATFA for any market value which such naval stores may have in excess of the amount of the loan, plus interest and charges.

§ 1438.11645 Personal liability.

Any fraudulent representation by ATFA or the producer in the program documents will render ATFA or the producer subject to criminal prosecution under applicable law, and personally liable for the amount by which the proceeds received upon the disposition of the naval stores involved are less than the amount of indebtedness incurred by ATFA with respect to such naval stores.

Signed at Washington, D.C., on April 26, 1978.

RAY FITZGERALD,
Executive Vice President,
Commodity Credit Corporation.

[FR Doc. 78-12037 Filed 5-2-78; 8:45 am]

[7590-01]

Title 10—Energy

CHAPTER I—NUCLEAR REGULATORY COMMISSION

EXPORT AND IMPORT OF NUCLEAR FACILITIES AND MATERIALS

Approval by Comptroller General

AGENCY: U.S. Nuclear Regulatory Commission

ACTION: Final rule. Approval of reporting and record keeping requirements by Comptroller General.

SUMMARY: On February 17, 1978, the Nuclear Regulatory Commission published in the FEDERAL REGISTER a notice of rulemaking, effective May 3, 1978, issuing a new part providing for standards, procedures, and rules of practice for licensing the export and import of utilization facilities, source, byproduct, and special nuclear materials. Conforming changes were made also to other parts of the regulations relating to export and import matters.

The notice included a note as follows:

NOTE.—The Nuclear Regulatory Commission has submitted this rule to the Comptroller General for such reviews as may be appropriate under the Federal Reports Act, as amended, 44 U.S.C. 3512. The date on which the reporting requirement of this rule becomes effective, unless advised to the contrary, accordingly reflects inclusion of the 45-day period which that statute allows for such review (44 U.S.C. 3512 (c)(2).)

The reporting and record keeping requirements set out in the rule have been approved by the U.S. General Accounting Office under number B-180225 (R0 519).

EFFECTIVE DATE: May 3, 1978.

The reporting and record keeping requirements set out in 10 CFR Part 110 which was published in the FEDERAL REGISTER on February 17, 1978 (43 FR 6915) have been approved by the U.S. General Accounting Office under number B-180225 (R0 519) and the effective date of the rule is May 3, 1978.

FOR FURTHER INFORMATION CONTACT:

Gerald L. Hutton, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone 301-492-7211

Dated at Bethesda, Md. this 28th day of April 1978.

For the Nuclear Regulatory Commission.

LEE V. GOSSICK,
Executive Director for Operations.

[FR Doc. 78-12183 Filed 5-2-78; 8:45 am]

[6450-48]

CHAPTER II—FEDERAL ENERGY ADMINISTRATION¹

PART 213—OIL IMPORT REGULATIONS

Oil Import Allocations for 1978-1979

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Final rule.

SUMMARY: Presidential Proclamation 3279, as amended, provides for an annually decreasing quantity of oil imports not subject to the license fees otherwise imposed by the Proclamation. For the next allocation period, which begins on May 1, 1978 and ends on April 30, 1979, the quantity of oil which may be imported without being subject to the fee is thirty-five percent of the level which was originally established in 1973. This rulemaking revises the Oil Import Regulations to conform them to the allocation levels established by the Proclamation for the next allocation year.

EFFECTIVE DATE: Date of issuance.

FOR FURTHER INFORMATION CONTACT:

Robert D. R. de Sugny, Office of General Counsel, Department of Energy, Room 5116, Federal Building, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461, 202-566-9380.

Robert R. Moore, Office of Oil Imports, Department of Energy, Room 6114, 2000 M Street NW., Washington, D.C. 20461, 202-254-8620.

Gerald P. Emmer, Allocation Regulations, Department of Energy, Room 2304, 2000 M Street NW., Washington, D.C. 20461, 202-254-7200.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Comparison With Proposed Rule
- III. Evaluation of Comments
- IV. Regulation Prescribed

I. BACKGROUND

Under the Mandatory Oil Import Program established pursuant to Presidential Proclamation No. 3279, as amended, the next allocation period for imports not subject to license fees under section 3(a)(1)(i)-(ii) of the Proclamation will commence on May 1, 1978. Section 8 of the Proclamation provides that for this allocation period

¹ Editorial Note: Chapter II will be renamed at a future date to reflect that it contains regulations administered by the Economic Regulatory Administration of the Department of Energy.

the maximum levels of imports subject to allocation and license to which license fees under section 3(a)(1)(i)-(ii) shall not be applicable shall be reduced to thirty-five percent (35%) of the levels established during the calendar year 1973.

II. COMPARISON WITH PROPOSED RULE

On March 24, 1978, the Economic Regulatory Administration of the Department of Energy issued proposed amendments to part 213 of Chapter II, title 10 of the Code of Federal Regulations (43 FR 13386, March 30, 1978), to provide for the commencement of the next allocation period and to reduce the levels of fee-exempt allocations in accordance with Presidential Proclamation 3279, as amended. It was also proposed that one paragraph be added to §§ 213.12(b) and 213.13(b) to provide for the contingency that the aggregates of the individual allocations derived from the formulae might exceed the levels of fee-free allocations permitted by the Proclamation. In such an event the additional paragraphs provided for a pro-rata reduction in each individual allocation. No other substantive changes were proposed.

The proposed rule provided for the submission of written comments and a public hearing which was subsequently cancelled after no requests to speak were received. After an evaluation of these comments it has been determined to adopt the proposal without change.

III. EVALUATION OF COMMENTS

Of the five comments submitted, only two addressed the specific changes which had been proposed and both comments were favorable. The other comments addressed general issues arising from the Oil Import and Entitlements Programs which were beyond the purview of this rulemaking which merely conforms the Department's regulations to the levels established in Presidential Proclamation 3279 for the next allocation year. The issues raised in the comments continue to be studied by the Department and may result in additional proposed rulemakings in the future. Such issues, however, have no bearing on the proposal at hand.

IV. REGULATION PRESCRIBED

After careful consideration of the comments, the Economic Regulatory Administration has decided not to make any changes in the amendment as proposed.

In consideration of the foregoing, part 213 of chapter II, title 10 of the Code of Federal Regulations, is amended as set forth below.

Issued in Washington, D.C., on April 28, 1978.

HAZEL R. ROLLINS,
Deputy Administrator Economic
Regulatory Administration.

§ 213.5 [Amended]

1. Section 213.5 is amended in paragraph (a) by deleting the term "May 1, 1977 through April 30, 1978" and by substituting therefor "May 1, 1978 through April 30, 1979"; and by deleting the term "April 29, 1977" and by substituting therefor "April 28, 1978".

§ 213.9 [Amended]

2. Section 213.9 is amended in paragraphs (a) and (b) by deleting the term "May 1, 1977 through April 30, 1978" and by substituting therefor "May 1, 1978 through April 30, 1979"; and by deleting the terms "1976" and ".50" and by substituting therefor "1977" and ".35" respectively.

3. Section 213.12 is amended in paragraph (a) by deleting the term "May 1, 1977 through April 30, 1978" and by substituting therefor "May 1, 1978 through April 30, 1979"; in paragraph (b) by deleting the terms "1976" and "366" and by substituting therefor "1977" and "365" respectively; and by adding the following at the end of the paragraph (b):

§ 213.12 Allocations; refiners; Districts I-IV and the Virgin Islands.

(b) * * * In the event the individual allocations, as determined by the respective schedules set forth in this paragraph, result, in the aggregate, in a total volume of crude oil which would exceed the total volume permitted to be entered without payment of license fees by the pertinent sections of Presidential Proclamation 3279, as amended, each applicant's allocation shall be reduced by an amount equal to the product of the following two factors: (1) The proportion that each applicant's individual allocation bears to the total volume of imports as determined by the respective schedules; and (2) the amount by which the volume of such total individual allocations exceed the total fee-free volume permitted by the Proclamation.

4. Section 213.13 is amended in paragraph (a) by deleting the term "May 1, 1977 through April 30, 1978" and by substituting therefor "May 1, 1978 through April 30, 1979"; in paragraph (b) by deleting the terms "1976" and "366" and by substituting therefor "1977" and "365" respectively; and by adding the following at the end of paragraph (b):

§ 213.13 Allocations; refiners; district V, Guam, and American Samoa.

(b) * * * In the event the individual allocations, as determined by the respective schedules set forth in this paragraph, result, in the aggregate, in a total volume of crude oil which would exceed the total volume permitted to be entered without payment of license fees by the pertinent sections of Presidential Proclamation 3279, as amended, each applicant's allocation shall be reduced by an amount equal to the product of the following two factors: (1) The proportion that each applicant's individual allocation bears to the total volume of imports as determined by the respective schedules; and (2) the amount by which the volume of such total individual allocations exceed the total fee-free volume permitted by the Proclamation.

§ 213.15 [Amended]

5. Section 213.15 is amended in paragraph (d) by deleting the term "May 1, 1977 through April 30, 1978" and by substituting therefor "May 1, 1978 through April 30, 1979"; and by deleting the term "1,450,000 bbl/d" and by substituting therefor "1,015,000 bbl/d".

§ 213.16 [Amended]

6. Section 213.16 is amended in paragraph (a) by deleting the term "May 1, 1977 through April 30, 1978" and by substituting therefor "May 1, 1978 through April 30, 1979"; by deleting the terms "10,000" and "3,750" and by substituting therefor "7,000" and "2,625" respectively; and by deleting completely the second sentence.

§ 213.20 [Amended]

7. Section 213.20 is amended in paragraph (a)(2) by deleting the term "May 1, 1977 through April 30, 1978" and by substituting therefor "May 1, 1978 through April 30, 1979"; and by deleting the term "113,611 bbl/d" and by substituting therefor "79,527 bbl/d".

§ 213.21 [Amended]

8. Section 213.21 is amended in paragraph (a)(2) and (b)(2) by deleting the term "May 1, 1977 through April 30, 1978" and by substituting therefor "May 1, 1978 through April 30, 1979"; in paragraph (a)(2) by deleting the term "719 bbl/d" and by substituting therefor "503 bbl/d"; and in paragraph (b)(2) by deleting the term "825 bbl/d" and by substituting therefor "577 bbl/d".

§ 213.32 [Amended]

9. Section 213.32 is amended in paragraph (c) by deleting, in the first sentence the term "but subject to supplemental fee"; and in paragraph (d) by deleting the term "May 1, 1977 through April 30, 1978" and by substituting therefor "May 1, 1978 through April 30, 1979"; and by deleting the

term "37,800 bbl/d" and by substituting therefor "26,460 bbl/d".

§ 213.33 [Amended]

10. Section 213.33 is amended in paragraph (c) by deleting the term "May 1, 1977 through April 30, 1978" and by substituting therefor "May 1, 1978 through April 30, 1979"; by deleting the term "620,000" and by substituting therefor "434,000"; in paragraph (d)(1) by deleting the term ".50" and by substituting therefor "0.35"; in paragraph (d)(2) by deleting the term "July 29, 1977" and by substituting therefor "May 1, 1978"; and by deleting the term "April 30, 1978" and by substituting therefor "April 30, 1979"; in paragraph (f) by deleting the term "August 31, 1977" wherever it appears and by substituting therefor "August 31, 1978"; by deleting the term "May 1, 1976 through April 30, 1977" and by substituting therefor "May 1, 1977 through April 30, 1978"; and by deleting the term "July 1, 1977" and by substituting therefor "July 1, 1978"; and in paragraph (h) by deleting the term "July 28, 1977" and by substituting therefor "April 28, 1978".

§ 213.34 [Amended]

11. Section 213.34 is amended in paragraphs (b) and (e) by deleting the term "May 1, 1977 through April 30, 1978" and by substituting therefor "May 1, 1978 through April 30, 1979"; and by deleting the term "25,000" and by substituting therefor "17,500".

§ 213.36 [Amended]

12. Section 213.36 is amended in paragraph (c) by deleting the term "May 1, 1977 through April 30, 1978" and by substituting therefor "May 1, 1978 through April 30, 1979"; and by deleting the term "620,000" and by substituting therefor "434,000"; in paragraph (d)(1) by deleting the term ".50" and by substituting therefor ".35"; in paragraph (d)(2) by deleting the term "July 29, 1977" and by substituting therefor "May 1, 1978"; and by deleting the term "April 30, 1978" and by substituting therefor "April 30, 1979"; in paragraph (f) by deleting the term "August 31, 1977" wherever it appears and by substituting therefor "August 31, 1978"; by deleting the term "May 1, 1976 through April 30, 1977" and by substituting therefor "May 1, 1977 through April 30, 1978"; and by deleting "July 1, 1977" and by substituting therefor "July 1, 1978"; and in paragraph (h) by deleting the term "July 28, 1977" and by substituting therefor "April 28, 1978".

§ 213.37 [Amended]

13. Section 213.37 is amended in paragraphs (a) and (c) by deleting the term "May 1, 1977 through April 30, 1978" and by substituting therefor

"May 1, 1978 through April 30, 1979"; and in paragraph (a) by deleting the term "16,250" and by substituting therefor "11,375".

[FR Doc. 78-12099 Filed 5-1-78; 10:06 am]

[3510-25]

Title 15—Commerce and Foreign Trade

CHAPTER III—INDUSTRY AND TRADE ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 379—TECHNICAL DATA

Revision of References Due to Change in Technical Data Regulations

AGENCY: Office of Export Administration, Bureau of Trade Regulation, U.S. Department of Commerce.

ACTION: Final rule.

SUMMARY: As a result of an amendment to § 379.4, published February 22, 1978 (43 FR 7311-5), paragraph (e) in that Section was relettered as paragraph (f). This rule makes technical amendments in § 379.4 by correcting the references in that Section to paragraph (e), to read paragraph (f).

EFFECTIVE DATE: May 3, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Charles C. Swanson, Director, Operations Division, Office of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230, 202-377-4196.

Accordingly, Part 379 of the Export Administration Regulations (15 CFR Part 379) is amended as follows:

1. In the first sentence of § 379.4, "§ 379.4(e)" is amended to read "§ 379.4(f)".

2. In the first sentence of § 379.4(f)(1), "§ 379.4(e)(1)(i)" is amended to read "§ 379.4(f)(1)(i)", and "§ 379.4(e)(1)(ii)" is amended to read "§ 379.4(f)(1)(ii)".

3. In the sixth sentence of § 379.4(f)(1), "§ 379.4(e)(1)(i)" is amended to read "§ 379.4(f)(1)(i)".

4. In the first sentence of § 379.4(f)(1)(ii), "§ 379.4(e)(1)" is amended to read "§ 379.4(f)(1)".

5. In the first sentence of § 379.4(f)(2)(i), "§ 379.4(e)(1)" is amended to read "§ 379.4(f)(1)"; "§ 379.4(e)(2)(v)" is amended to read "§ 379.4(f)(2)(v)"; and "§ 379.4(e)(2)" is amended to read "§ 379.4(f)(2)".

6. In the Note following § 379.4(f)(2)(ii)(c), the following amendments are made:

(a) In the first sentence, "§§ 379.4(e)(2)(ii) (b) and (c)" is amended to read "§§ 379.4(f)(2)(ii) (b) and (c)";

(b) In the first sentence of numbered paragraph two, "§ 379.4(e)(2)(ii)(b)" is amended to read "§ 379.4(f)(2)(ii)(b)"; and

(c) In the first sentence of the final paragraph, "§§ 379.4(e)(2)(ii) (b) and (c)" is amended to read "§§ 379.4(f)(2)(ii) (b) and (c)".

7. In the first sentence of § 379.4(f)(2)(iv), "§ 379.4(e)(2)" is amended to read "§ 379.4(f)(2)".

8. In the first sentence of § 379.4(f)(2)(v), "§ 379.4(e)(2)" is amended to read "§ 379.4(f)(2)".

9. In the first sentence of the Note following § 379.4(f)(2)(v)(c), "§§ 379.4(e) (1) or (2)" is amended to read "§§ 379.4(f) (1) or (2)".

10. In § 379.8(a)(3), "§ 379.4(e)" is amended to read "§ 379.4(f)".

(Sec. 4, Pub. L. 91-184, 83 Stat. 842 (50 U.S.C. App. 2403), as amended; E.O. 12002, 42 FR 35623 (1977); Department Organization Order 10-3, dated December 4, 1977, 42 FR 64721 (1977); and Industry and Trade Administration Organization and Function Order 45-1, dated December 4, 1977, 42 FR 64716 (1977).)

Dated: April 26, 1978.

STANLEY J. MARCUSS,
Deputy Assistant Secretary
for Trade Regulation.

[FR Doc. 78-12032 Filed 5-2-78; 8:45 am]

[4210-01]

Title 24—Housing and Urban Development

CHAPTER XIII—FEDERAL DISASTER ASSISTANCE ADMINISTRATION, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-78-4951]

PART 2205—FEDERAL DISASTER ASSISTANCE

In-Lieu Contributions; Final Amendments

AGENCY: Federal Disaster Assistance Administration, Department of Housing and Urban Development.

ACTION: Final rule.

SUMMARY: The final rule amends the regulations pertaining to small project applications (in-lieu contributions) for the repair or restoration of public facilities which were damaged or destroyed in a major disaster. The amendment redesignates certain paragraphs to improve the presentation of the material. These amendments are needed to set forth policies for the easing of final inspection requirements, the adjustment of the level of Federal funding, and the disposition of unused Federal funds.

EFFECTIVE DATE: June 2, 1978.

FOR FURTHER INFORMATION CONTACT:

Robert J. Adamcik, Public Assistance Office, Federal Disaster Assistance Administration, Department of Housing and Urban Development, Washington, D.C. 20410, 202-634-7835.

SUPPLEMENTARY INFORMATION: On December 23, 1977 the Department published a proposed rule (42 FR 64371) amending Section 419 of the Disaster Relief Act of 1974. During the comment period two commentators submitted the comments which are discussed below.

RETURN OF UNUSED FUNDS

One comment suggested that the last two sentences of § 2205.54(i)(2) be deleted since the cost of recovering the funds would be greater than the amount returned and virtually all expenditures made by applicants are authorized. This is not entirely correct. There are certain types of work such as maintenance and the repair of facilities not damaged in the disaster which are not eligible for reimbursement. The only eligibility requirements for Section 419 Grants are that the funds be spent for an authorized purpose and that they be spent within certain time limitations. FDAA cannot assure that the provisions of the law are being met without imposing these controls. If the funds are not spent within these eligibility constraints, they must be returned. Therefore we do not agree that the last two sentences of § 2205.54(i)(2) should be deleted.

PROJECT LISTING

A comment proposed that the word "listing" in § 2205.54(i)(3) be defined. The listing required by the regulation is developed by the FDAA Regional Director and contains a Summary of the Applicant's approved projects based on the Damage Survey Reports. FDAA does not intend that a standardized form be created or that the State or Applicant need develop an independent form. Each of the FDAA Regional Directors will be furnished with a suggested format for the listing and the States will receive guidance from the appropriate Regional Director. We feel that the listing is adequately described in § 2205.54(i)(3) and no further definition is necessary.

ADJUSTMENTS TO FUNDING AMOUNTS

A comment suggested that a change which would specify that the identification of eligible damage which was overlooked during the initial surveys of a disaster-affected area could be a permissible basis for requesting increased project funding. FDAA does accept Damage Survey Reports on sites which have been overlooked if

they are submitted on a timely basis. We intend that the phrase, "omission in defining the approved scope of work," applies to those situations where additional eligible work is identified and therefore, we see no need to change the wording of § 2205.54(i)(4).

ADJUSTMENTS TO FUNDING AMOUNTS

Another comment proposed amending this paragraph to provide for an increase when the actual costs or the low bids on the project exceed the estimated amount. FDAA feels that this is contrary to the law which specifies that the amount of the grant is based on a Federal Estimate. The proposed procedure would require another stage of review and would delay unnecessarily the funding of the grant. Therefore, this suggested change to § 2205.54(i)(4) is not adopted.

A finding of inapplicability with respect to environmental impact has been prepared in accordance with HUD Handbook 1390.1.

Copies of the finding are available for inspection and copying in the Office of the Rules Docket Clerk.

The amendments are adopted without change, as set forth below.

(Sec. 419, Pub. L. 93-288, 88 Stat. 159 (42 U.S.C. 5189), Executive Order 11795 as amended by Executive Order 11910, 39 FR 25939, Delegation of Authority, 39 FR 28227.)

Issued at Washington, D.C., April 20, 1978.

WILLIAM H. WILCOX,
Administrator, Federal Disaster
Assistance Administration.

§ 2205.54 [Amended]

Paragraph (h)(1) is redesignated (h). Paragraphs (h)(1)(i) through (h)(1)(iv) are redesignated as (h)(1) through (h)(4) respectively.

Paragraphs (i), (j) and (k) are redesignated (j), (k) and (l) respectively.

Paragraph (h)(2) is deleted and replaced by paragraph (i)

Paragraph (i) to read as follows:

(i) *Small project applications (in-lieu contributions).* (1) Where the Federal estimate of total cost approved by the Regional Director for reimbursement to the applicant is less than \$25,000 under Sections 306, 402, and 403 of the Act, the in-lieu contribution will be based on 100 percent of such approved total estimated cost. Direct Federal assistance, and any assistance requested by an applicant on behalf of a private non-profit organization, shall not be included in determining the amount of the in-lieu contribution under Section 419 of the Act. However, the Regional Director may approve Federal funding under Sections 306, 402, or 403 in any instance

where he determines that the circumstances do not justify an in-lieu contribution under Section 419 of the Act.

(2) Funds contributed under this subsection may be expended either to repair, restore, reconstruct or replace certain selected damaged or destroyed public facilities; to construct new public facilities which the applicant determines to be necessary to meet its needs for governmental services and functions in the disaster affected areas; or to undertake the disaster work authorized under Sections 306 and 403 of the Act upon which the Federal estimate of damages is based. Any funds which remain unused after the applicant has exercised the available option shall be returned. The Regional Director shall apply current applicable procedures to issue a Bill for Collection or to recover the funds by the offset of Federal funds to which the State would otherwise be entitled under the Act to assure that all such unexpended funds are returned.

(3) The Regional Director shall furnish the applicant through the Governor's Authorized Representative with a listing of projects which have been approved. This listing shall include a brief description, location and estimate of cost approved for each project. Within 30 days following completion of the work performed under this subsection, the applicant shall complete and return this listing through the Governor's Authorized Representative to the Regional Director covering those originally approved projects and those alternate projects that were completed. This listing shall also include the applicant's certification that all work on the listing has been completed and all funds were expended in accordance with the purpose of Section 419 of the Act and with these regulations. There shall be such final inspection and audit as deemed necessary by the Regional Director to assure that the funds were expended in accordance with the purposes of Section 419 of the Act.

(4) If an applicant subsequently submits a supplement to its project application that would increase the grant under Section 419 of the Act to an amount exceeding \$25,000, the entire contribution shall revert to a categorical grant or to a 90 percent contribution under § 2205.54(h) as approved by the Regional Director. The only permissible basis for increasing Federal funding is an error or omission in defining the approved scope of work or in the approved estimated reasonable costs of such work. Federal funding may be reduced where the applicant fails to comply with the applicable laws, regulations, and procedures of the Department, including but not limited to: non-compliance with assurances, illegal contracting methods, duplication of benefits, and non-confor-

mity with applicable codes, specifications and standards.

[FR Doc. 78-12016 Filed 5-2-78; 8:45 am]

[1505-01]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

[T.D. 7541]

PART 7—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1976

Election With Respect to Recovery of Intangibles Under Section 57(d) of the Code

Correction

In FR Doc. 78-11334 appearing at page 17815 in the issue for Wednesday, April 26, 1978, in the middle column of page 17816, in the last line of paragraph (b)(1) of § 7.57(d)-1, the date now reading "... June 26, 1978." should have read "... July 25, 1978."

[3620-01]

Title 32—National Defense

CHAPTER XII—DEFENSE LOGISTICS AGENCY

SUBCHAPTER A—DEFENSE LOGISTICS PROCUREMENT REGULATION

[DLAR 4105.11]

REVISION OF REGULATIONS

AGENCY: Defense Logistics Agency.

ACTION: Final.

SUMMARY: The Defense Logistics Procurement Regulations (DLPR) implements the Armed Services Procurement Regulation (ASPR) and other Department of Defense Publications. It establishes procedures and delegations of authority governing the procurement of supplies and services by the Defense Logistics Agency under chapter 137, title 10 of the United States Code or other statutory authority.

DATE: Effective date, January 31, 1978.

ADDRESS: Defense Logistics Agency, Cameron Station, Alexandria, Va. 22314.

FOR FURTHER INFORMATION CONTACT:

Mr. Dean Fogle, 202-274-6431.

J. J. McALEER, Jr.,
Colonel, U.S.A.,

Staff Director, Administration.

This subchapter supersedes subchapter A issued in volume 41, No. 43, March 3, 1976.

The provisions of this subchapter A are issued under 5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DoD Directive 5105.22, January 5, 1977.

Subchapter A, chapter XII of title 32 of the Code of Federal Regulations is revised to read as follows:

Part

- 1201 General provisions.
- 1202 Procurement by formal advertising.
- 1203 Procurement by negotiation.
- 1204 Special types and methods of procurement.
- 1205 Interdepartmental and coordinated procurement.
- 1206 Foreign purchases.
- 1207 Contract clauses, and solicitation provisions.
- 1208 Termination of Contracts.
- 1209 Patents, data, and copyrights.
- 1210 Bonds, insurance, and indemnification.
- 1212 Contractor industrial labor relations.
- 1213 Government property.
- 1214 Procurement quality assurance.
- 1215 Contract cost principles and procedures.
- 1216 Procurement forms.
- 1217 Extraordinary contractual actions to facilitate the national defense.
- 1219 Transportation.
- 1220 Administrative matters.
- 1221 Procurement management reporting system.
- 1225 Production surveillance and reporting.
- 1250 Supplemental procedures.

PART 1201—GENERAL PROVISIONS

Subpart A—Introduction

Sec.

- 1201.101 Purpose of subchapter.
- 1201.102 Applicability of subchapter.
- 1201.103 Arrangement of subchapter.
- 1201.103-2 Numbering.
- 1201.103-4 Citation.
- 1201.104 Content of subchapter.
- 1201.104-50 DLPR.
- 1201.104-51 Procurement letters.
- 1201.104-52 Multiple Address letters.
- 1201.105 Amendment of subchapter.
- 1201.107 Dissemination and effective date of the subchapter (including appendices, revisions, supplementals and manuals).
- 1201.108 Departmental procurement instructions and ASPR implementations.
- 1201.109 Deviations from this subchapter and Department of Defense publications governing procurement.
- 1201.109-1 Applicability.
- 1201.109-2 Deviations affecting one contract or transaction.
- 1201.109-50 Deviations to mandatory clauses.
- 1201.109-51 Submission of requests for deviations (Dev.).
- 1201.109-52 Control of deviations.
- 1201.110 Reports of purchases and contracts.
- 1201.110.50 Advance notification of proposed awards.

- Sec.
1201.150 Administration and interpretation.
1201.151 Procurement and production directors' conference.

Subpart B—Definition of Terms

- 1201.201 Definitions.
1201.201-14 Procuring activity.

Subpart C—General Policies

- 1201.307 Priorities, allocations, and allotments.
1201.307-50 Notice to bidders.
1201.310 Liquidated damages.
1201.314 Disputes and appeals.
1201.318 Contracts conditioned upon the availability of funds.
1201.324 Warranties.
1201.324-50 Warranty actions.
1201.325 Variation in quantity.
1201.325-50 Delivery of excess quantities of \$25 or less.
1201.332 Minority business enterprises.
1201.332-5 Minority business enterprise subcontracting program.
1201.350 Changes in procurement processes, techniques or methods.
1201.350-1 General.
1201.350-2 Concept of notification.
1201.350-3 Examples of significant changes.
1201.350-4 Data to support request.
1201.351 Delivery status information on procurements for the international logistics program (ILP).
1201.352 Extended procurement delays.

Subpart D—Procurement Responsibility and Authority

- 1201.401 Responsibility of each procuring activity.
1201.401-50 Delegation of authority.
1201.401-51 Limited purchasing authority.
1201.402 Authority of contracting officers.
1201.402-50 General responsibilities of contracting officers.
1201.402-51 Procedure for closing contracts with inconsequential amounts undelivered.
1201.403 Requirements to be met before entering into contracts.
1201.403-50 Legal review.
1201.405 Selection, appointment, and termination of appointment of contracting officers.
1201.405-1 Selection.
1201.405-2 Appointment.
1201.405-3 Termination of appointment.
1201.450 Selection, appointment, and termination of appointment of contracting officers' representatives.
1201.451 [Reserved]
1201.452 Review and approval requirements.
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AUTHORITY: The provisions of this subchapter A are issued under 5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DoD Directive 5105.22, January 5, 1977.

Subpart A—Introduction

§ 1201.101 Purpose of subchapter.

The Defense Logistics Procurement Regulation (DLPR) is issued by the Executive Director, Procurement, HQ DLA by authority of the Director, Defense Logistics Agency (DLA). Armed Services Procurement Regulation (ASPR) and other Department of Defense publications and, pursuant to Subchapter A, Chapter I of this title, establishes for DLA procedures relating to the procurement of supplies and services under the authority of Chapter 137, Title 10 of the United States Code, or other statutory authority.

§ 1201.102 Applicability of subchapter.

(a) This subchapter is applicable to the purchasing function at all DLA activities, but is not applicable to the performance of field contract administration assigned to Defense Contract Administration Services (DCAS).

(b) Whenever revisions to ASPR are published which make coverage in this subchapter obsolete or contradictory to that in ASPR, the provisions in ASPR shall apply.

(c) Whenever DLA Regulations, containing policies and procedures relating to procurement conflict with ASPR or this subchapter, the policies and procedures in ASPR and this subchapter shall govern.

§ 1201.103 Arrangement of subchapter.

§ 1201.103-2 Numbering.

The numbering system in DLPR follows the numbering system in ASPR. Where a section of the DLPR does not implement a particular section but pertains to the general subject matter covered in a particular part of the ASPR, the added section shall be numbered starting with the digits "50" (e.g., in subpart A of part I, this would be § 1201.150). Likewise where the DLPR has material implementing a main ASPR section, but not fitting under the ASPR point numbers and titles, such material is numbered to end in .50, .51, etc., such as 1-110.50, 1-110.51, etc.

§ 1201.103-4 Citation.

The DLPR shall be referred to as the Defense Logistics Procurement Regulation and any paragraph may be cited as DLPR followed by the paragraph number. Thus, this paragraph would be cited as DLPR 1-103.4.

§ 1201.104 Content of subchapter.

§ 1201.104-50 DLPR.

This subchapter contains all Departmental policies, procedures and

instructions relating to procurement of supplies and services within the Defense Logistics Agency, except those contained in ASPR and the DLAR or DLAM series of DLA regulations. DLPR does not duplicate or paraphrase ASPR and is issued only to cover delegations of authority, assign responsibilities, and other procedures consonant with § 1-108 of this title which are essential to DLA.

§ 1201.104-51 Procurement letters.

Numbered procurement letters (PROCLTRS) include policy statements of general interest to procurement personnel, re-emphasis of existing policy and information of a temporary nature. They are generally directed to procurement staff levels within the Defense Supply Centers (DSCs) but wider attention within the Procurement Directorates may be directed upon the face of the letter. Procurement letters will normally be cancelled within six months.

§ 1201.104-52 Multiple address letters.

Unnumbered multiple address letters will be issued for one-time requests for comments or reports, announcements of Procurement and Production Directors' Conferences and other meetings, etc. No implementation beyond the action requested is contemplated. They are self-canceling when they have served their purpose.

§ 1201.105 Amendment of subchapter.

Recommendations for revision of ASPR and DLPR shall be submitted, through channels, to the Executive Director, Procurement, Defense Logistics Agency, Cameron Station, Alexandria, Va. 22314, Attn: DLA-PPR.

§ 1201.107 Dissemination and effective date of the subchapter (including appendices, revisions, supplements and manuals).

(a) Heads of Procuring Activities shall insure that copies of the ASPR and DLPR, including revisions, are distributed to all interested activities and individuals.

(b) Compliance with the DLPR, including any revision to the DLPR, shall be permissive effective with the date of issuance thereof (as indicated by the page revision date) and shall be mandatory effective 90 days thereafter, unless otherwise provided in such revision.

§ 1201.108 Departmental procurement instructions and ASPR implementations.

(a) Implementations of ASPR and DLPR may be issued by Heads of Procuring Activities provided they are consistent with § 1-108 of this title. In addition, the Executive Director, Procurement, HQ DLA has delegated this authority to the Commander, Defense

Industrial Plant Equipment Center (DIPEC). Implementations shall not duplicate or paraphrase ASPR or DLPR, modify or revise the policy in ASPR or DLPR, or contain deviations to ASPR or DLPR unless authorized by the procedures of § 1-109 of this title and § 1201-109. The format, general plan, and numbering system of implementations shall be the same as ASPR/DLPR.

(b) Heads of Procuring Activities and DIPEC shall furnish the HQ DLA, Attn: DLA-PPR, one copy of each implementing instruction properly referenced to the ASPR or DLPR paragraph to which it pertains.

§ 1201.109 Deviations from this subchapter and Department of Defense publications governing procurement.

§ 1201.109-1 Applicability.

Actions which constitute deviations from ASPR or Department of Defense publications governing procurement as set forth in § 1-109.1 of this title shall also constitute deviations from the provisions of DLPR.

§ 1201.109-2 Deviations affecting one contract or transaction.

Deviations from ASPR, a Department of Defense Directive, or the DLPR which affect only one contract or transaction, will be made only after prior approval by the Executive Director, or Deputy Executive Director, Procurement, HQ DLA.

§ 1201.109-50 Deviations to mandatory clauses.

Prior to requesting an ASPR deviation, one-time or otherwise, the Commander or Deputy Commander shall make a determination on a case-by-case basis whether or not to personally negotiate with contractors who have refused to accept mandatory ASPR clauses in an attempt to obtain contractor acceptance. In those cases where it is determined that the Commander should not personally conduct negotiations, a detailed memorandum setting forth the rationale shall be forwarded with the referral to HQ DLA, Attn: DLA-PP.

§ 1201.109-51 Submission of requests for deviations (Dev).

(a) Requests for authority to deviate from the provisions of ASPR, Department of Defense Directives, or the DLPR will be submitted (in original and four copies) to HQ DLA, Attn: DLA-PPR. Deviation requests shall be in the format of: I. Problem, II. Recommendation, and III. Discussion.

(b) For those deviations which have originated in any DLA field activity, it will be the responsibility of the originator to initiate action for renewal or extension, when appropriate, at least 90 days prior to the expiration date. If

no request is received in DLA-PPR, it will be assumed the need for the deviation no longer exists and the deviation will automatically expire.

§ 1201.109-52 Control of deviations.

Separate registers shall be maintained by the Executive Director, Procurement, HQ DLA of the deviations granted from ASPR and DLPR. Each deviation shall be recorded in its appropriate register and shall be assigned a control number as follows: an abbreviation of the regulation involved and the word deviation; fiscal year; and the serial number assigned to the particular deviation; e.g., ASPR Dev. 76-1, DLPR Dev. 76-1. The control number shall be embodied in the document authorizing the deviation and shall be cited in all references to the deviation.

§ 1201.110 Reports of purchases and contracts.

§ 1201.110-50 Advance notification of proposed awards.

(a) Data on all proposed contract awards of \$1 million or more shall be submitted to the HQ DLA contract point by telephone at least 48 hours (two full working days) prior to 1,100 hours of the date the Center proposes to make the contract award (excluding those contracts made with the Small Business Administration under authority of Section 8(a) of the Small Business Act). Mandatory orders to be placed with the Federal Prison Industries, the National Industries for the Blind and Agencies for the Severely Handicapped are not included in this reporting requirement. However, non-mandatory orders to be placed with the Industries for the Blind are included. This report will be known as "contract announcement" and will carry Reports Control Symbol DO-LA(AR)1279.

(b) Definitions. (1) Contract awards as used herein include any contractual instrument that obligates funds where the total amount of the contract is \$1 million or is expected to reach or exceed \$1 million. Requirements contracts that do not obligate funds at the time of award are not "contract awards" for the purpose of this paragraph. Delivery orders in the amount of \$1 million or more issued against these requirements contracts are "contract awards." Where a requirements contract does obligate an amount of less than \$1 million at the time of award and it is estimated that the cumulative amount of the contract will exceed \$1 million such type of requirements contract is a "contract award."

(2) Contractual instrument includes but is not limited to notices of awards, definitive contracts, letter contracts, orders placed against requirements or indefinite delivery type contracts, sup-

plemental agreements, change orders, provisioning orders, contract modifications, letters of intent, and funding action.

(c) The HQ DLA contact point is DLA-PC, Autovon No. 284-6461.

(d) Data submitted to the HQ DLA contact point shall be verified for accuracy by a responsible DLA field activity official prior to submission to HQ DLA. This data is used to provide information outside the Department of Defense, therefore, accuracy is of paramount importance.

(e) The following data shall be provided (in this sequence) to the HQ DLA contact point:

(1) Name and address of purchasing activity;

(2) Proposed release date;

(3) Contract number;

(4) Amount;

(5) Name and location of proposed contractor (include street address, zip code, and county, size of business, i.e., large or small), and labor surplus area designation;

(6) Item and quantity to be awarded;

(7) Name and location of facility to perform contract, indicating if a division or affiliate of contractor in paragraph (5) of this section, (include street address, zip code, county and labor surplus area designation);

(8) Type of contract, e.g., firm fixed price; fixed price with escalation;

(9) Amount previously obligated (if this announcement is a modification to an existing contract);

(10) Number of concerns solicited and number of concerns submitting bids/proposals;

(11) Using Service;

(12) Name of official in field activity familiar with award;

(13) Information as to any proposed local press release or any local Congressional interest; and

(14) A statement of whether or not EEO clearance has been obtained.

(f) Awards and release of information on contract awards of \$1 million or more shall not be made before the date and time agreed upon by the HQ DLA contact point and the field activity. Any proposed local press release should also be withheld. If for any reason, clearance is not received by HQ DLA, the Defense Supply Center will be notified promptly to withhold award until clearance has been obtained. If following agreement as to date and time of contract award announcement, the award will not be made, the HQ DLA contact point shall be notified by telephone immediately.

§ 1201.150 Administration and interpretation.

The administration and interpretation of DLPR is the responsibility of Executive Director, Procurement, DLA (DLA-P).

§ 1201.151 Procurement and Production Director's Conference.

A Procurement and Production Directors' Conference will be convened on a semi-annual basis or at the call of the Executive Director, Procurement, DLA, under the monitorship of the Programs & Analysis Office (DLA-PA). The conference provides a forum for discussion of current problems, discussion of management improvements, exchange of information on latest developments in the fields of procurement and production, and for other matters, which assist in the development of procurement and production policies and procedures. Attendance at these conferences will comprise as a minimum the Executive Director or Deputy Executive Director, Procurement, (DLA-P/PD), representatives from Headquarters, Procurement and Production Divisions and Offices, and Procurement and Production Directors and/ Deputy Directors from DLA Supply Centers.

Subpart B—Definition of Terms

§ 1201.201 Definitions.

§ 1201.201-14 Procuring activity.

The Executive Director, Procurement, HQ DLA, shall exercise the functions, not otherwise delegated, of Head of Procuring Activity for any DLA Supply Centers or Activities not under an HPA and not designated as "Procuring Activities" pursuant to § 1-201.14 of this title. This includes the: (a) Defense Industrial Plant Equipment Center; (b) Defense Logistics Services Center; (c) Defense Depot Memphis; (d) Defense Depot Ogden; (e) Defense Depot Tracy; and (f) Defense Logistics Agency Administrative Support Center.

Actions required by the Armed Services Procurement Regulation, this subchapter, or other directives involving the functions of the Head of the Procuring Activity not otherwise delegated shall be referred to the HQ DLA, Attn: DLA-PP.

Subpart C—General Policies

§ 1201.307 Priorities, allocations, and allotments.

§ 1201.307-50 Notice to bidders.

The following notice shall be included in a prominent place, with each bid package distributed to industry for procurement action:

SECTION C, INSTRUCTIONS, CONDITIONS AND NOTICES TO OFFERORS/QUOTERS

PRIORITY RATING (DLA 1974 JUL)

Any contract awarded under this solicitation will be assigned a priority rating (DO or DX as applicable) and will include a certification for national defense use under regulations issued by the Department of Commerce in implementation of the Defense

Production Act of 1950, as amended. Contractors are required to utilize said rating in obtaining the products, materials and supplies needed to fill their contracts. In the event the contractor is unable to obtain the necessary products, materials and supplies to complete his contract, he shall immediately advise the Defense Contract Administration Services Region (DCASR) or the appropriate Defense Supply Center (DSC) DMS Officer through the cognizant Administrative Contracting Office (ACO) or Procuring Contracting Officer (PCO). The DMS Officer or the DCASR Industrial Specialist will provide necessary assistance or will provide the necessary instructions to complete the Form BDSAF-138, Request for Special Priorities Assistance. The Form BDSAF-138 will be processed through appropriate channels to the Department of Commerce which upon receipt will take action to make the needed supplies available to the applicant.

§ 1201.310 Liquidated damages.

Recommendations concerning the remission of liquidated damages shall be transmitted to HQ DLA, Attn: DLA-G.

§ 1201.314 Disputes and appeals.

(d) All appeals will be presented to the Armed Services Board of Contract Appeals by trial attorneys of the DLA Defense Supply Center involved. Direct communication with the Board is authorized. The charter and rules of the Armed Services Board of Contract Appeals are set forth in Appendix A, ASPR. All official correspondence with the Board will be addressed to the Recorder, Armed Services Board of Contract Appeals, 200 Stonewall Street, Alexandria, Va. 22332. At the time of filing with the Board or receipt by the trial attorney, a copy of each Notice of Appeals, Complaint, Answer, Rule 4 Memorandum (without enclosures), Brief, and Motion for Reconsideration, if any, shall be forwarded to the Counsel, DLA.

(e) In all cases except those to be disposed of under Rule 12, the trial attorney shall forward to the Counsel, DLA, copies of the Trial Memorandum, documents that have been filed under Rule 4 or are to be introduced in evidence at the hearing, and, if not included in the Trial Memorandum, a summary of the testimony of proposed witnesses. This information shall be forwarded ten days prior to date set for the hearing.

(f) If, after review of a Board decision on contracts of his procuring activity, Counsel for the activity is of the opinion that the decision is erroneous, a Motion for Reconsideration should be filed. If the Board denies the motion or sustains its previous decision and a decision by the Comptroller General is desired prior to payment, the request for such a decision shall be forwarded to HQ DLA, ATTN: DLA-G.

§ 1201.318 Contracts conditioned upon the availability of funds.

It is recognized that there may be instances, other than those described in ASPR 1-318, where it will be necessary to initiate a procurement prior to the availability of funds. In such instances, the action will only be taken after the facts concerning the proposed solicitation are presented to DLA-P for review as to the necessity for such action and the obtaining of the required ASPR deviation permitting use of the provisions set forth in § 7-104.91 of this title.

§ 1201.324 Warranties.

§ 1201.324-50 Warranty actions.

When warranty actions have been initiated under procurement instruments containing warranty clauses in accordance with ASPR 1-324, it is essential all DSCs maintain a record of these warranty actions. This record is necessary to help determine the usefulness of the warranty clause versus the cost of administering the warranty actions. The record will be maintained in a central location on a fiscal year basis. No more than two prior fiscal years will be retained. The record shall contain as a minimum the following information:

- (a) Date and reason warranty was invoked;
- (b) Contract number;
- (c) Contractor;
- (d) Dollar value of material covered by warranty;
- (e) Disposition of material or other considerations obtained; and
- (f) Date warranty action completed.

§ 1201.325 Variation in quantity.

§ 1201.325-50 Delivery of excess quantities of \$25 or less

Unless there is a valid reason to the contrary, the clause set forth below shall be included in all contracts, purchase orders and Blanket Purchase Agreements.

DELIVERY OF EXCESS QUANTITIES OF \$25 OR LESS (DSA 1972 Nov)

The contractor is responsible for the delivery of each item or sub-item quantity within allowable variations, if any, required by the contract or order. If the contractor delivers and the Government receives quantities of any item or sub-item in excess of the quantity called for by the contract or order (after considering any allowable variation in quantity) and the dollar value of such excess quantity amounts to \$25 or less, the excess quantity will be treated as being delivered for the convenience of the contractor; and the Government may retain such excess quantities without compensating the contractor therefor; and the contractor waives all right, title, or interests therein.

§ 1201.332 Minority business enterprise.

§ 1201.332-5 Minority business enterprise subcontracting program.

When the Utilization of Minority Business Enterprises clause in § 1207.104-36(a) is used, and the contract is expected to exceed \$500,000, the contracting officer shall make a determination of subcontracting potential on a case-by-case basis. When it is determined that substantial subcontracting possibilities do exist, the clause in § 7-104.36(b) of this title shall be included. If it is determined that substantial subcontracting possibilities do not exist, the procedures in 1-707 shall apply.

§ 1201.350 Changes in procurement processes, techniques or methods.

§ 1201.350-1 General.

Whenever a procuring activity contemplates a significant change in a procurement process, technique or method which may reasonably be expected to have a substantial impact on industry and/or the Government, the activity shall notify promptly HQ DLA, ATTN: DLA-PPR, of the contemplated change and the reasons and basis therefor.

§ 1201.350-2 Concept of notification.

Headquarters DLA requires notification of contemplated changes which are of significant nature prior to initiation of action to accomplish such changes. This prior notification is necessary in order that Headquarters may become conversant with the matter in the event there is any reaction from industry, the Congress, or the using Military Departments. In addition, Headquarters has access to, and knowledge of, information which may not be available at the field level and as such, is in a position to evaluate the significance of the proposed action to the Agency as a whole. Accordingly, it is essential that HQ DLA know what is contemplated before the initiation of a significant change is publicized. This requires that all notifications be submitted as far in advance of public disclosure as possible, in order that HQ DLA clearance may be obtained, and the intended purpose of this requirement be served.

§ 1201.350-3 Examples of significant changes.

Representative types and categories of contemplated changes which are of a significant nature and which necessitate prior notification to HQ DLA are (but not limited to) a change in:

- (a) a longstanding inspection requirement or procedure;
- (b) the method of providing and/or accounting for Government-furnished property;
- (c) a type of contract which constitutes a significant departure from the

procurement technique previously utilized;

(d) solicitation techniques and the elements used in evaluation of offers;

(e) the region/area from which procurement of an item has been previously accomplished;

(f) the location of a buying/purchasing office; or

(g) item specification which prompts a major change in manufacturing and/or processing techniques.

§ 1201.350-4 Data to support request.

In order that the impact of a contemplated change in procurement method may be determined, requests for approval of a proposed change in a procurement method should contain the following information:

(a) A description of the present and proposed procurement methods;

(b) A statement of the difficulties encountered in the use of the present method and/or the improvements foreseen as the result of a change;

(c) A statement as to the degree of impact of the change expected on industry and/or the Government; and

(d) A statement as to the net benefits accruing to the Government as a result of the change.

§ 1201.351 Delivery Status Information on Procurements for the International Logistics Program (ILP).

Contracts and purchase orders awarded in support of requisitions from the Navy International Logistics Control Office, Bayonne, New Jersey, for the ILP shall:

(a) Identify the requirement as a separate contract line item or sub-line item in accordance with § 20-304.2 of this title. If the purchase request does not contain this information, the contracting officer shall contact the originator to obtain the necessary data. The applicable requisition number shall be entered immediately under the line or sub-line item. (ILP requisitions are identified by the letter P or K preceding requisition number).

(b) Provide for the designated contract administration services component to distribute to the Navy International Logistics Control Office, (Bayonne, New Jersey) a copy of any report or document which indicates an anticipated or actual delay in delivery of line or sub-line items for the ILP. Copies of such reports distributed to Navy International Logistics Control Office shall include the requisition number applicable to the line or sub-line item involved and shall be in addition to any other distribution required by the contract or directives applicable to the contract administration services component.

§ 1201.352 Extended procurement delays.

The purchasing office shall immediately notify Supply Operations when

extended delays are anticipated in contract award and, when possible, also advise of the anticipated length of the delay in the proposed delivery schedule.

Subpart D—Procurement Responsibility and Authority

§ 1201.401 Responsibility of each procuring activity.

§ 1201.401-50 Delegation of authority.

Authority conferred upon the Heads of Procuring Activities under any paragraph of DLPR may be delegated with power of redelegation to other officers or civilian officials of DLA, except when specifically limited by law or the provisions of the pertinent DLPR paragraph.

§ 1201.401-51 Limited purchasing authority.

The Commander, Defense Logistics Agency Administrative Support Center is granted limited purchasing authority for the following:

(a) Small Purchase authority, i.e., accomplishment of small purchases (\$10,000 or less) as provided for in Part 3, Subpart F of this title and of this subchapter.

(b) The use of a Blanket Purchase Agreement (BPA) without monetary restriction except that each call under a BPA may not exceed \$5,000. (§ 3-605 of this title).

(c) Unlimited ordering authority for:
(1) Common use classes of supplies and services under Federal Supply Schedule (FSS) contracts.

(2) Supplies from General Services Administration (GSA) Stores Depot (Part 5, Subpart A of this title).

(3) Repairs and Refinishing Services on GSA and FSS contracts (§ 5-205 of this title).

(4) Prison-made and blind-made supplies (§ 5-400 and § 5-500 of this title).

(5) Printing and related supplies under GPO contracts (§ 5-601 of this title).

§ 1201.402 Authority of contracting officers.

Contracting officers may enter into, amend, modify, and take other action with respect to contracts, provided:

(a) Approval of award has been obtained, if required, and the contract embodies the award as approved;

(b) The contract is written on a standard or an approved form of contract;

(c) The contract is authorized by law and complies with the provisions of ASPR and DLPR with respect to the use of contract clauses and does not contain any clause or involve matters in conflict with the established policy of higher authority;

(d) Compliance has been made with all other requirements of law, the ASPR, the DLPR, and the applicable procuring activity instructions; and

(e) The contract is adequately funded.

§ 1201.402-50 General responsibilities of contracting officers.

(a) Contracting officers are responsible for:

(1) The safeguarding of the interests of the United States in contractual relationships;

(2) Their acts as contracting officers under law and regulations;

(3) Maintaining constant cognizance with respect to contract compliance on the part of the contractor;

(4) Obtaining the necessary legal, technical, and administrative review of the contracts they make; and

(5) Knowing the scope and limitations of their authority.

(b) Contracting officers shall personally sign all contracts and modifications entered into in their name. The Contracting Officer cannot designate anyone to sign for him.

(c) Contracting officers shall be bound in all their actions to exercise reasonable care, skill, and judgment. They must assure themselves that the contract is authorized by law, that funds are available, and of their authority to subject the Government or its property to any risk. Contracting officers shall neither act as nor perform the duties of a contracting officer with respect to any contractual instrument obligating only nonappropriated funds. However, contracting officers may act in an advisory capacity with respect to the aforementioned instruments.

§ 1201.402-51 Procedure for closing contracts with inconsequential amounts undelivered.

The Procuring Contracting Officer (PCO) is authorized on a case-by-case basis to consider a contract completed when an inconsequential amount not falling within the variation in quantity clause remains undelivered or, in the case of brand name subsistence or less than carload lots of perishable subsistence items, the undelivered amount is no longer requested by the using activity, provided all of the following conditions exist:

(1) Payment is provided for on a unit price basis, and the contractor advises that no further deliveries will be made;

(2) Payment is made for the units actually received;

(3) The undelivered portion is inconsequential, or in the case of brand name subsistence or LCL perishable subsistence items, the undelivered amount is no longer required by the using activity, and the cost of executing a supplemental agreement (including, but not limited to taking termination action) is excessive in relation to the benefits to the Government from such action; and

(4) The PCO includes in the file a memorandum stating that no rights of the Government are being waived by this procedure and a termination for default is not unwarranted. The PCO shall execute and distribute a Standard Form 30 (or other unilateral instrument) as an Administrative Change to the contract to deobligate funds. The Change shall indicate that the above criteria have been met and the contract is considered complete, and shall reference the contractor's communication which advised that no further deliveries will be made.

§ 1201.403 Requirements to be met before entering into contracts.

§ 1201.403-50 Legal review.

(a) Legal advice and assistance of assigned legal counsel shall be obtained in the preparation of clauses other than standard clauses which are to be contained in solicitations, and on any questionable legal areas in the preparation and/or execution of contractual documents.

(b) Procuring activities within the Defense Logistics Agency shall issue instructions on the legal review of solicitations and contractual documents issued by their activities.

§ 1201.405 Selection, appointment, and termination of appointment of contracting officers.

The Authority in § 1-405 of this title has been delegated by the Executive Director, Procurement, DLA, (DLA-P) to the Commander of each of the following activities:

(1) Defense Depot Memphis.

(2) Defense Depot Ogden.

(3) Defense Depot Tracy.

(4) Defense Industrial Plant Equipment Center.

(5) Defense Logistics Services Center.

(6) Defense Logistics Agency Administrative Support Center.

§ 1201.405-1 Selection

High qualification standards must be maintained for the appointment of contracting officers. Authority to execute and administer contracts of \$100,000 or greater should be given only to civilian personnel of Grade GS-12 or above, and to military personnel with at least three years specialized experience in procurement and three years experience in related fields. Exceptions to these minimum qualifications may be granted on a case-by-case basis by the Head of a Procuring Activity and the Commanders of the activities enumerated in § 1201.405 where exceptional circumstances necessitate appointment of an individual.

§ 1201.405-2 Appointment.

(a) Contracting Officer Appointment Documentation Sheet, DLA Form 581,

shall be used to facilitate the documentation of recommendations for appointment. This form shall be completed by the official recommending an individual for appointment. Properly prepared, the form will assist the appointing authority, normally the HPA, in determining whether or not the nominee is qualified for appointment. Also, it will provide HQ DLA a current profile of contracting officers.

(b) One copy of each appointment Documentation Sheet shall be sent to HQ DLA ATTN: DLA-PPR.

§ 1201.405-3 Termination of appointment.

(b) *Revocation.* One copy of each revocation of an appointment shall be sent to HQ DLA, ATTN: DLA-PPR.

§ 1201.450 Selection, appointment, and termination of appointment of contracting officers' representatives.

(a) *Designation.* The selection, appointment, and termination of appointment of Contracting Officers' Representatives (COR) shall be made by the contracting officer. Such appointments shall take into consideration the ability, training, and experience of COR designees and shall assure that designees are appropriately qualified to act as an authorized representative of the contracting officer. The COR designations shall be in writing and shall define the scope and limitations of the authorized representative's authority. Appointment shall be made by letter substantially in the form set forth in (d) of this section. Unless the appointment of a COR contains other provisions for automatic termination, the appointment shall be effective, unless sooner revoked, until the COR is reassigned, or his employment is terminated. Revocation of a COR appointment may be effected at any time by the appointing authority, or higher authority, or any successor to either. Revocation shall be made by letter reading substantially as shown in (e) of this section.

(b) *Authority.* CORs will be responsible to and under supervision of the contracting officer for those actions delegated by the Contracting Officer and unless specifically prohibited by the terms of the contractual instrument involved may, at the discretion of the contracting officer, be empowered to take any and all actions which could be lawfully taken by the contracting officer consistent with the scope and limitations of the appointment. Compliance with the Standards of Conduct prescribed in DOD Directive 5500.7 and DLAR 5500.1 shall be maintained.

(c) *Documentation.* Supplementing the normal supervision of the COR by the contracting officer, the contracting officer shall maintain an "activity" file on each COR. The purpose of this file is to record and maintain the re-

sults of periodic reviews of the COR's procurement activities conducted annually by the contracting officer. The contents of the activity file will include but are not limited to:

(1) A copy of the COR's letter of appointment;

(2) Examples of in-depth reviews of the COR's performance with appropriate identification of the work performed including DO's issued; and

(3) Documentation by the contracting officer of the date, substance, and extent of the reviews conducted.

(d) *Sample Form of Suggested Letter for Appointing COR's.*

Subject: Appointment as Contracting Officer's Representative.

To: (Address to individual, indicating rank or grade, branch, division, activity and location.)

1. Under the authority vested in me by the _____, 1 January 1975 subject: Delegation of Authority, you are hereby designated Contracting Officer's Representative with authority conferred by the Contracting Officer.

2. This order shall be in full force and effect until revoked by me or my successor in the same manner as it is hereby granted, or upon your being transferred from the (include branch, division, activity and location).

/s/ CONTRACTING OFFICER.

(e) *Sample Form of Suggested Letter for Terminating Appointment as Contracting Officer's Representative.*

Subject: Termination of Appointment as Contracting Officer's Representative.

To: (Address to individual, indicating rank or grade, branch, division, activity and location.)

Your appointment as Contracting Officer's Representative contained in letter appointment dated _____, is hereby terminated effective _____.

/s/ CONTRACTING OFFICER.

§ 1201.451 [Reserved]

§ 1201.452 Review and approval requirements.

§ 1201.452-1 General.

Every proposed contractual document and supporting file shall be reviewed by the contracting officer prior to signature of the document and prior to forwarding the file for review by higher authority. The contracting officer is responsible for the completeness and accuracy of the file as well as for the soundness of the contractual action. Each file must contain the applicable information, or cross reference thereto, contemplated by ASPR Supplement No. 2 "Contract File Maintenance, Closeout and Disposition" in sufficient detail to permit reconstruction of all significant actions by a subsequent reviewer without referrals to the individuals who consummated the procurement.

§ 120.452-2 Actions requiring HQ DLA review and approval prior to award.

(a) The actions (the term actions as used herein includes both contracts and contract modifications effecting new procurement) listed below require the review and approval of the Executive Director or Deputy Executive Director, Procurement, HQ DLA, or other DLA official so delegated prior to award. Actions are to be submitted to HQ DLA, ATTN: DLA-PC. For review purposes, the dollar amount of an action shall be the sum of the estimated or actual amount of obligation and the amount of any option included in the action.

(1) All actions other than firm fixed-price or fixed-price with escalation;

(2) All actions providing for special performance incentives;

(3) All actions involving—

(i) Architectural-engineering services;

(ii) Management engineering services;

(iii) Management surveys and studies;

(iv) Personal or professional services, not covered by applicable civilian personnel instructions;

(v) Services for maintenance of or for manufacture in Government-owned, contractor-operated facilities. (Not applicable to the Defense Fuel Supply Center.);

(vi) Services and materials for the repair, maintenance, rehabilitation, alteration or modification of Government installations and utilities of \$100,000 or more;

(vii) Proposed lease of Government property for non defense use;

(viii) Acquisition of automatic data processing equipment and software in accordance with DLAR 4710 and;

(ix) Acquisition of facilities.

(4) All actions resulting from an invitation for bids (including Balance of Payments and Small Business Restricted Advertising types) when award is proposed to a sole responsive, responsible bidder, and the total dollar amount of the sole bid items being awarded is \$100,000 or more, except subsistence items which, by industry practice, are normally subject to 72 hours or less acceptance time, e.g., coffee, flour, sugar;

(5) All negotiated actions including orders under Basic Ordering Agreements with a value of \$100,000 or more, when award is proposed to a sole offeror.

(6) All actions which involve construction of petroleum facilities;

(7) All negotiated actions (excluding actions resulting from Balance of Payments and Small Business Restricted Advertising and actions covering the set-aside portion of a procurement made by formal advertising) in an amount equal to or in excess of:

Defense Construction Supply Center.....	\$750,000
Defense Electronics Supply Center—	
FSC 5960.....	500,000
All other supply classes.....	100,000
Defense Fuel Supply Center:	
Supplies.....	5,000,000
Services.....	100,000
Defense General Supply Center.....	750,000
Defense Industrial Supply Center.....	75,000
Defense Personnel Support Center:	
Clothing and Textiles.....	500,000
Medical.....	500,000
Subsistence.....	1,000,000
Defense Depot Memphis.....	50,000
Defense Depot Ogden.....	50,000
Defense Depot Tracy.....	50,000
Defense Industrial Plant Equip. Center..	50,000
Defense Logistics Services Center.....	50,000
DLA Administrative Support Center.....	10,000

(8) Each exercise of an option, regardless of whether the basic contract was advertised or negotiated, and each order under a basic ordering agreement, when the action is in an amount equal to or in excess of that stated in § 1201.452(a)(7) for the activity concerned;

(9) Each order under an indefinite delivery type contract in which the amount of the order is equal to or in excess of that stated in § 1201.452(a)(7) for the activity concerned, except where the basic contract was approved by HQ DLA.

(10) All actions incorporating the Life Cycle Costing concept.

(b) Orders placed against requirements contracts, other Federal agencies, or the National Industries for the Blind or Agencies for the Severely Handicapped are excluded from these review requirements. Contracts negotiated with the Small Business Administration pursuant to Section 8(a) of the Small Business Act are also excluded.

§ 1201.452-3 Information to be furnished.

The complete contract file of those actions subject to HQ DLA review and approval shall be transmitted for review upon completion of negotiations but prior to award. DLA Form 677, "Request for Contract Review/Approval," signed by the contracting officer and by the Commander, his deputy, or the principal officer responsible for procurement shall be used to request review and approval. The file, including a copy of the current specification covering the basic item(s) or service(s), shall be arranged in accordance with ASPR supplement No. 2 and individual documents numbered and assembled in accordance with DLA Form 678, "File Content List," which shall be attached to DLA Form 677. All documents shall be securely fastened in the file which shall be assembled so as to permit viewing of each document without disassembling the file. A carbon copy of the DLA Form 677 and 678, together with copies of (a) the proposed contract (including the solicitation and all amendments thereto), (b) the review comments of the procuring activity review office, (c) determination and findings, (d) field pricing report, (e) cost/price analysis, (f) prenegotiation briefing

memorandum, and (g) price negotiation memorandum shall be furnished for retention by HQ DLA. The purchasing office will be notified immediately by telephone when significant information is missing from the file or the available information is inadequate to permit review. Further review action will be withheld pending receipt of the required information. When a solicitation results in two or more proposed awards, one or more of which requires approval, the quantities, prices and names of proposed awardees shall be submitted with requests for approval and all awards will be withheld pending advice of required approval. Telephonic notification of approval, qualified approval, or disapproval will be furnished immediately with written approval evidenced on the original of DLA Form 677, "Request for Contract Review/Approval," which shall be made part of the contract file.

§ 1201.452-4 Release of information.

Prospective suppliers are not to be advised that awards have been forwarded to HQ DLA for approval.

§ 1201.452-5 Proposed shifts in procurements from a competitive to a noncompetitive basis.

Procurements of \$1 million and over where it is proposed to shift from a competitive to a noncompetitive status shall be approved in advance by the Head of the Procuring Activity.

§ 1201.452-6 Post award review.

Selected contracts will be subject to post award review. This review may be accomplished by a request for the contract file or during a visit to the applicable purchasing activity by HQ DLA contract review personnel. The results of these reviews and the results of the reviews accomplished prior to award will be utilized to determine future review levels for the activity involved.

§ 1201.452-7 Actions approved but not awarded.

If for any reason action subject to the requirements of § 1201.452-2 are reviewed and approved and subsequently not awarded, HQ DLA, ATTN: DLA-PC, shall be so advised. A complete explanation of the failure to make the award shall be provided.

§ 1201.452-8 Cancellation requirements.

(a) In order to insure that supply discipline and financial stability are not attained at the expense of sound procurement methods and the responsibility of this Agency to its suppliers, the following review system is in effect:

(1) Each partial or total cancellation of an invitation for bids after opening shall be effected only with the approval of the Head of the Procuring Activity.

(2) Reprocurement of an item within 90 days after cancellation under (1) of this section, where the cancellation was occasioned by a revision of requirements or by funding limitations, shall have prior approval of the Head of the Procuring Activity.

(b) Except as specified in (c) of this section, this procedure shall apply to cancellations for any reason other than failure to obtain coverage or unreasonableness of offered prices.

(c) This procedure shall not apply to procurements of nonstocked items or to procurements originated by a MIPR.

§ 1201.452-9 Letter contracts.

(a) Approval of the Executive Director or Deputy Executive Director, Procurement, HQ DLA, or other HQ DLA official so delegated is required prior to award of letter contracts when the resulting definitive contracts will be subject to HQ DLA preaward review and approval under any of the criteria set forth in § 1201.452-2(a). Requests for such authority are to be made by the Center Director, Procurement and Production and may be transmitted by electronic means (ATTN: DLA-PC) and shall include, as a minimum:

(1) The facts supporting the requirement for a letter contract (§ 3-108 (b) and (c) of this title);

(i) Why the interests of national defense demand that a contractor be given a binding commitment so that work can be commenced immediately;

(ii) Why negotiation of a definitive contract in sufficient time to meet the procurement need is not possible; and

(iii) The written determination that no other type of contract is suitable.

(2) A determination of the contractor's responsibility in accordance with § 1-904 of this title;

(3) The proposed unit price and total price ceilings for the definitive contract;

(4) The limit of the Government's liability under letter contract;

(5) Any requirement for progress payments, provisional payments, and options for increased quantity;

(6) The proposed definitization schedule which shall include the dates for:

(i) Receipt of the contractor's proposal;

(ii) Commencement of negotiations;

(iii) Completion of negotiations;

(iv) Target date for definitization.

(7) The following additional milestone dates are to be submitted:

(i) Receipt of filed pricing report;

(ii) Receipt of the center price analysis;

(iii) Submission of the definitive contract and supporting file for HQ DLA preaward review and approval.

(b) HQ DLA authorization is required prior to modification of all letter contracts which required HQ

DLA authorization when the proposed modification affects the:

- (1) Unit price or total price ceilings of the definitive contract;
- (2) Limit of the Government's liability under the letter contract;
- (3) Definitization date;
- (4) Progress or provisional payments as initially proposed;
- (5) A copy of the signed letter contract or modification shall be forwarded to HQ DLA, ATTN: DLA-PC, within 1 week after its execution; and
- (6) Any anticipated or actual slippage in the definitization schedule or the additional milestones must be reported in writing to DLA-PC. The reasons for the slippage and the revised schedule or milestone dates shall also be provided.

§ 1201.452-10 Requests for waiver of HQ DLA preaward review and approval.

(a) In the event extraordinary circumstances are present and immediate award of a procurement action is required, Directors or Deputy Directors of Procurement and Production may request the waiver of Headquarters' preaward review and approval requirements (see § 1201.452-2). Request for waivers from other than "procuring activities" (see § 1201.201-14) shall be made by the Chief of the Purchasing Office. Requests are to be transmitted to the attention of the Chief, Contract Review Office, HQ DLA (DLA-PC) and, when immediate action is required, request may be telephoned.

(b) The granting of a waiver by the Executive Director or Deputy Executive Director of Procurement, HQ DLA (DLA-PC), does not constitute approval of the award or any deviations from applicable laws and regulations. All actions for which preaward review and approval is waived, shall be forwarder to HQ DLA, ATTN: DLA-PC, for post award review within fourteen (14) days subsequent to award or such other mutually acceptable date.

(c) As a minimum, the following information shall be provided to support waiver requests:

- (1) The extraordinary circumstances that require the immediate award of the procurement action (this should include a general chronology of events from receipt of the requirement to submission of the request);
- (2) Description of the item (and quantity) being procured;
- (3) The solicitation and contract number;
- (4) The contractor's name;
- (5) The total dollar value of the proposed award;
- (6) The extent of competition (if award is proposed to other than the low bidder/offeree, the rationale for not accepting the low bid/offer); and
- (7) A statement that the contractor is responsible, preaward survey has been performed or waived by appropriate

authority; and that, if required, EEO clearance has been obtained.

§ 1201.452-11 Confirmation of quantity and technical requirements.

Immediately prior to the award of any contract which includes war reserve requirements, the contracting officer shall insure that the cognizant Chiefs of appropriate Divisions within Supply and Technical Operations Directorates (Chiefs of appropriate Branches within Supply and Technical Operations Divisions at DPSC) have confirmed that the quantities therein are still required and that the technical requirements specified are still current and not likely to be changed in the near future. Immediately prior to award shall be construed as that point in time when all required approvals have been obtained and the contract is ready for release to the contractors. With respect to eligible awards consummated as a result of MIPRs, confirmation of quantity and technical requirements shall be effected verbally with the MIPR Liaison/Coordination or item manager levels of the requiring departments. Appropriate documentation shall then be included in the contract file. Procuring activities are encouraged to establish similar procedures for significant awards below \$100,000 as may be appropriate for their types of procurements.

§ 1201.452-12 Report of procurement actions requiring headquarters DLA preaward review and approval by the close of the fiscal year (RCS: DLA(A)1720(P)).

(a) Each Defense Supply Center and each activity named in § 1201.201-14 shall submit a list of procurement actions which will require Headquarters DLA pre-award review and approval pursuant to § 1201.452-2 by October 1. The initial report shall be submitted by letter on August 1 and will include only those procurement actions to be forwarded subsequent to August 15. The report will be updated by letters on August 15 and September 1. Telephone updatings are required on each Monday subsequent to September 1 and prior to October 1. Negative reports are required.

(b) The report shall include the following for each procurement:

- (1) Contract number, RFP/IFB number or other identification;
- (2) Contractor's name;
- (3) Dollar value, including the value of any option;
- (4) Whether advertised or negotiated;
- (5) If negotiated, whether cost or pricing data was obtained; and
- (6) Week to be submitted for HQ DLA pre-award review and approval.

(c) The letter reports shall be signed by either the Director/Deputy Director of Procurement and Production of

the purchasing activity. With respect to those activities named in § 1201.201-14, the letter reports may be signed by the Chief of the Procurement Office. Telephonic updatings may be made by the Chief of the Contract Review Office of the DSC procuring activities and the Chief of the Procurement Office at the other activities.

§ 1201.453 Review and approval requirements at the procuring activity.

(a) Each DLA procuring activity shall establish and maintain requirements and procedures for review and approval of proposed contractual actions to assure conformance with law, regulations and established policy, and the exercise of good business judgment. The scope and depth of the review will be determined by Heads of Procuring Activities based on workload and available manpower, but as a minimum will encompass a representative number of actions, including sole bids/offers and complex or high dollar value procurements. In addition, randomly selected procurement actions including noncompetitive small purchases will be reviewed after award. A summary record of such post award reviews and the results thereof shall be maintained by the activity.

(b) The Contract Review Office, organized in conformance with DLAM 5810.1, shall perform the review function. The review shall be performed as a full time duty where workload requires one or more people for the review. The person selected as the Chief of the Contract Review Office, in addition to possessing the qualifications set forth for a contracting officer in ASPR and § 1201.405, shall be a strong personality with demonstrated technical proficiency and capability of exercising sound business judgment. Personnel from other areas such as counsel, small business, technical operations, production, etc., may serve in an advisory capacity, as appropriate. Personnel may be rotated at intervals to ameliorate workload problems and to afford the individuals an opportunity to utilize the experience so gained.

§ 1201.454 Review and approval requirements for a procurement office not designated as a "Procuring Activity" (see § 1201.201-14).

The dollar threshold under § 1201.452-2(a) (3)(vi) and (5).

Subpart F—Debarment, Ineligibility, and Suspension

§ 1201.601 Establishment and maintenance of records and lists of firms or individuals debarred, ineligible, or suspended.

§ 1201.601-1 General.

The Counsel, DLA shall maintain the DLA list which will contain only

the names of firms and individuals located in the United States, its territories and possessions.

§ 1201.601-3 Joint consolidated list.

The Counsel, DLA shall furnish to the Department of the Army a listing of all additions, deletions, or modifications to the Joint Consolidated List resulting from DLA action.

§ 1201.601-50 Attempted evasions.

In some instances, firms or individuals have attempted to evade the prohibitions contained in ASPR and § 1201.604 and § 1201.605 by change of address or by formation of a new company. In such cases where it can be reasonably established that the suspended or debarred firm or individual has the controlling or active interest in a new company, or that the address is the same as that of the suspended or debarred firm or individuals, a report shall be submitted through channels to the Counsel, DLA.

§ 1201.603 Grounds for listing and treatment to be accorded listed concerns.

§ 1201.603-50 Total restrictions.

If an offer is tendered by a debarred or suspended contractor it shall be received and recorded. When an offer is rejected, the reason shall be stated in the certificate to the General Accounting Office as follows:

The bid of _____ is rejected pursuant to ASPR 1-603.

§ 1201.604 Administrative debarment of firms or individuals (type A).

§ 1201.604-3 Notice of debarment.

Upon the debarment or removal from debarment of a contractor prior to termination of the specified period, the Counsel, DLA shall furnish advice of such action to the contractor, and to the General Services Administration in accordance with ASPR 1-604.3(b).

§ 1201.605 Suspension of firm or individual.

(a) *Payments.* Where suspension is recommended or a contractor is suspended, no payments shall be made without the prior approval of the Counsel, DLA. Upon receipt of a notice of suspension, disbursing officers shall retain all administratively approved vouchers in favor of the contractor pending instructions from the contracting officer. Offices holding or in receipt of proper invoices covering amounts due to suspended contractors shall prepare and administratively approve the necessary vouchers and shall forward the certified vouchers to their assigned disbursing officers, inviting attention to the fact of suspension. This procedure shall be followed

whenever any additional or new amounts become due during the period of suspension. When in the opinion of the Head of the Procuring Activity concerned, the circumstances surrounding either the procurement or the suspicion of fraud or criminal conduct are of such a nature as to permit or require complete or partial release of withheld funds due the suspended contractor, a recommendation for such release including a full statement supporting such recommendation shall be made to the Counsel, DLA.

(b) *Terminations.* Negotiations toward settlement of terminated contracts shall cease with the suspension of a contractor. Negotiations must likewise cease with respect to terminated subcontracts either awarded or held by a suspended contractor. All authorizations granted to such a contractor under section VIII, ASPR or Part 1208 of this subchapter shall be revoked immediately.

(c) *Awards.* Bids submitted by suspended contractors shall not be rejected by contracting officers solely because of the suspension but will be received, recorded, and retained in accordance with established procedures. When a suspended contractor is the low bidder or offeror (or, in the case of surplus and salvage sales, the high bidder), and the procuring activity considers it in the interest of the Government to accept the bid or offer, information relating to: (1) The low (or high) bid or offer and the next lowest (or highest) bid or offer; (2) expirations of options and whether such options may be extended; and (3) the desirability or necessity of acceptance of the suspended contractor's bid or offer shall be reported together with recommended action in the same manner as set forth in ASPR 1-608 for a determination as to the placement of any awards with the suspended contractor.

(d) *Inquiries.* Inquiries by procuring activities concerning the status of reported cases shall be transmitted in triplicate to the Counsel, DLA.

§ 1201.608 Reporting.

Heads of Procuring Activities shall submit the reports described in ASPR 1-608, which shall be designated "For Official Use Only" unless the details included warrant a security classification.

§ 1201.650 Review of past contractual relationships.

When the name of a concern has been added to the consolidated listing in ASPR 1-601, or a report is submitted requesting suspension or debarment, a review shall also be made of contractual relationships with the company and its affiliates for the previous 2 years, or longer if considered necessary to determine whether the

Government may have any basis for recovery of damages, or payments from the contractor.

Subpart G—Small Business Concerns

§ 1201.702 General policy.

(a) The Small Business program shall be conducted as an integral element in the DLA mission to achieve effective and efficient military supply.

(b) A continuing effort shall be made to stimulate the maximum qualified competition for DLA contracts, with special emphasis directed toward promoting that of small business firms. Contracting personnel should prepare all solicitations so as to preclude insertion of provisions that may limit competition from small business firms.

(c) Procurement officials and Small Business Specialists shall take all possible and reasonable actions to inform small business firms of subcontracting opportunities being offered by prime contractors.

§ 1201.704 Small business officials.

§ 1201.704-50 Counseling activities.

(a) This subpart covers the general objectives of counseling and provides guidance to the Small Business Specialist in the conduct of his counseling activities. It also covers the materials that may be used in counseling practice.

(b) Each Small Business Specialist shall develop a personalized approach to, and pattern for, his counseling activities, to include the following concepts:

(1) The basic attitude toward counseling must be that of "service" to the businessman. Each DLA Small Business Specialist is a counselor for all DLA centers. Under no circumstances is an inquiry to be handled casually in an endeavor to dispose of the problem with the least amount of effort, nor should an inquirer be told to get in touch with another DSC. When a Small Business Specialist determines that an inquirer's problem can best be handled in another DSC he should make the necessary contact, introduction, and appointment. To the maximum extent possible, the same approach should be taken when the inquirer's problem must be handled by another element of the Department of Defense or by another Government agency. In short, industry inquires shall, whenever possible, be handled on a "one-stop-service" basis.

(2) The major objective of counseling is to attract the maximum number of qualified competitors for DLA contracts.

(3) A supporting objective of counseling is to provide as complete as possible service to all inquiries. Whether or not a businessman is found to be a potential bidder for DLA contracts, ef-

forts shall be made to identify for him other Government agencies which might be interested in what he has to offer.

(c) In counseling, the primary role of the Small Business Specialist is to assist a businessman in his attempt to do business with DLA and, secondarily, with other elements of the United States Government. The Small Business Specialist, however, must not attempt to interpret invitations for bid, requests for proposals, specifications, or related documents. If the need for such interpretation becomes evident, the Small Business Specialist shall arrange an interview for the businessman with the appropriate contracting officer or his designee.

(d) The Small Business Specialist shall maintain adequate stocks of all Government publications designed to assist the operator of a small business in his approach to selling to DLA and to other elements of the United States Government. The Specialists must have available for reference the cataloging handbooks, Federal Supply Classifications, regulations, and directories necessary to provide adequate information to inquiring businessmen.

(e) The HQ DLA Small Business Advisor shall serve as a focal point for arranging for the initial distribution and replenishment stockage of those publications made available by Government agencies; and shall assist, if requested, in arranging for replenishment of these documents.

(f) Centers are urged to develop pamphlets and brochures describing the opportunities for businessmen which they provide. When these documents are published, provisions shall be made to supply the HQ DLA Small Business Specialists in the other supply centers and the HQ DLA Small Business and Economic Utilization Advisor with an initial stock of 50 copies. The initial distribution shall be accompanied by instructions for replenishment. The provision of copies for the HQ DLA Special Assistant for Public Affairs should be coordinated with the local Public Affairs Office.

§ 1201.704-51 Participation in industrial assistance events, business opportunity/Federal procurement conferences, procurement clinics, fairs, etc.

(a) The office of the HQ DLA Small Business and Economic Utilization Advisor will act as the overall coordinator for DLA participation in industrial assistance events (IAEs) and other business opportunity conferences. All events will be coordinated with the Office of the Special Assistance for Public Affairs, HQ DLA.

(b) Requests for DLA participation in events being sponsored by Federal or local Governments, or Chambers of Commerce involving more than the local DLA office will be coordinated

with the DLA Advisor's office. For local events involving the local activity only, reports as to the type and kind of Agency participation will be provided to the Advisor's office or as soon as practicable after the event is held.

(c) For Business Opportunity/Federal Procurement conferences sponsored by Congressional offices, with DLA participation requested by the Office of the Director, Defense, Research and Engineering (ODDR & E), OSD, the office of the HQ DLA Small Business and Economic Utilization Advisor will coordinate the Agency's participation requesting assistance and participation by appropriate DLA field activities. Participation in these events will be conducted as directed by the DLA Advisor's office.

(d) To the maximum extent practicable, each DSC shall, as requested, participate in IAEs, and shall budget, on a yearly basis, funds necessary to cover travel costs for these events. On the basis of past experience, this would involve approximately seven trips per year. These include procurement clinics, small business/federal procurement conferences, expositions, and similar activities designed to increase the competition of qualified small business and other firms for DLA and other Government activity contracts.

(e) Participation in these events shall consist primarily of attendance by small business specialists and procurement personnel for the purpose of counseling and advising businessmen on how they may do business with DLA. Exhibits of DLA items, talks by DLA officials, and the showing of relevant DLA films may be included when appropriate. Whenever the DLA Advisor is the DOD Coordinator of the event, the DSC Specialist will be requested to conduct the seminar on "How To Prepare Bids."

(f) The type of participation by each DSC shall be as directed by the DLA Small Business and Economic Utilization Advisor and should reflect the extent to which the businessmen attending the event may be potential sources of supply for DLA. Efforts should be made to announce procurements and items of interest to these businessmen in time to permit appropriate counseling at the event.

(g) Individual supply centers may also develop and sponsor industrial assistance events oriented exclusively to the individual procurement programs. Planning for such events should be effected in close coordination with the office of the HQ DLA Small Business and Economic Utilization Advisor and the Center and the HQ DLA Special Assistant for Public Affairs.

§ 1201.705 Cooperation with the Small Business Administration.

§ 1201.705-4 Certificates of Competency.

(a) When a small business is determined nonresponsible because of lack of capacity or credit, but it is determined under the authority of ASPR 1-705.4(c)(iv) that the expediency of the requirement precludes referral to the Small Business Administration (SBA) for Certificate of Competency (COC) action, award to the next lowest responsible bidder must be made within the 15 working day period established in ASPR 1-705.4(c) for SBA COC action. If such award cannot be made in this period, SBA should be given an opportunity to consider the issuance of the Certificate of Competency. All efforts should be made through proper procurement planning to provide sufficient time for COC action by SBA, should such action become necessary. This includes: (1) The issuance of procurement requests at a time early enough to allow sufficient time for orderly procurement, (2) the earliest possible request for pre-award survey, (3) the handling of COC referrals by telephone where appropriate and (4) expeditious follow-up of COC referrals.

(b) When the urgency situation contemplated by ASPR 1.705.4(c)(iv) clearly exists, the requiring activity shall fully document the urgency involved, indicating exact dates, quantities, usage data, etc. these determinations shall be coordinated with the Small Business Specialist and approved in accordance with ASPR 1-705.4 before the low small business bid is bypassed and award made to a higher bidder.

(c) ASPR 1-705.4(c)(vi) requires that when a contracting officer makes a determination that a small business concern is not responsible for reasons other than deficiencies in capacity or credit, his decision must be supported by substantial evidence documented in the contract file. When such a determination is made, the documentation shall be reviewed to assure that the evidence presented substantiates the decision as to the concern's lack of integrity, business ethics or persistent failure to apply the necessary tenacity and perseverance to do an acceptable job. For DSCs, this review shall be made by the HPA, or his designee. For other purchasing activities, the review shall be made by the Activity Commander or his designee. In addition, for each case where a determination is made under ASPR 1-705.4(c)(vi), a copy of all pertinent information, including supporting documents, shall be forwarded to HQ DLA, ATTN: DLA-PS, for informational purposes.

(d) Contracts involving a contractor to whom a COC was issued by SBA, or to whom loans were made with SBA

participation, shall not be terminated for default without prior approval by the HPA.

(e) ASPR 1-705.4(f)(iii) provides that in cases where the Contracting Officer requires the issuance of a COC by SBA as a prerequisite to contract award, approval of such action will be obtained at a level above the Contracting Officer. For those cases where this situation exists, Contracting Officers will obtain approval from the Director, Procurement and Production prior to informing the SBA Field Office that a certificate must be issued.

§ 1201.705-5 Contracting with the Small Business Administration.

(a) *Authority.* (1) Single Point of Contact Between SBA and DSC. The Small Business/Labor Surplus Area Specialist (hereafter referred to as Specialist) of the purchasing office is designated as the initial and primary point of contact for all inquiries associated with this program. To the extent requested by a prospective section 8(a) subcontractor, or by an SBA representative on its behalf, the Specialist will take appropriate action to set up meetings or discussions which may be required with technical, supply, and procurement personnel.

(2) The Specialist is hereby authorized to perform the duties of the DLA Advisor as set forth in ASPR 1-705.5. This includes authority to receive requests for a commitment to support SBA approved plans, authority to issue commitments to the SBA in support of firms in the 8(a) Business Development Program and authority to grant approval to proceed with the negotiation of proposed section 8(a) contracts. Direct communication between the Specialist and all SBA offices is authorized and encouraged.

(b) *Policy.* (2) *Business development expense (BDE).* By agreement with SBA, the SBA will generally provide the DOD an order for BDE in advance of the placing of a prime contract with SBA. The amount to be covered by the order is determined in advance of contract award by a comparison of the total price negotiated with SBA and the subcontractor (in accordance with existing procedures in ASPR 1-705.5) with the current fair market price developed in accordance with ASPR 1-705.5 (b)(2) and (c)(1)(L) as agreed with SBA. The prime contract price placed by DOD with that Agency will include those expenses as a part of the cost of the items ordered and will not be separately identified in the contract. DOD funds, which will include the anticipated reimbursement from SBA, will be cited on the contract. Upon award of the contract, SBA will be billed against their reimbursement order under procedures set by the Comptroller, HQ DLA.

(3) *Contract assistance.* Requests for technical and/or management assis-

tance which are in excess of DSC or DCAS capability and resources shall be referred to DLA-PS or DLA-AS as appropriate. Through agreement between HQ DLA and SBA, technical and management assistance teams can, under certain circumstances, be made available to augment assistance provided by the PCO and/or ACO.

(4) *Identification of items and requirements for section 8(a) contracting.*

(i) In addition to responding to SBA requests for potential requirements to support an approved business plan of a disadvantaged firm in accordance with ASPR 1-705.5(c) (1) and (2), and paragraph (c) of this section, it is the policy of DLA to identify other requirements which are considered by the procuring activity as suitable for placement with SBA under the section 8(a) contract program.

(ii) Contracting Officers will consider the section 8(a) contract program as a possible method of satisfying all new requirements being processed for procurement action. Special attention will be given to those commodities and services which are anticipated to be recurring requirements and for which there is a limited number of prospective small business sources. Production and technical operations personnel should participate in this review when appropriate.

(iii) Whenever a current requirement is identified as a possible candidate for accomplishment under the section 8(a) contract program, the following actions will be taken:

(A) Where the "desired" or "required" delivery criteria permits section 8(a) consideration, the requirement shall be referred in writing to the Director, Office of Business Development, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416, for national-buy items and the appropriate SBA regional office for local-buy items. The SBA Procurement Center Representative (PCR) assigned to the purchasing office shall be informed in every case by copy of the written offer. A reasonable due date for a reply from SBA shall be established, and will be stated in the offering letter. If no response is received from the SBA by the due date, the requirement may be withdrawn or the time extended at the option of the purchasing office.

(B) Where delivery criteria requires immediate procurement action, the appropriate SBA office, as outlined in § 1201.705-5, shall be notified in writing that future requirements may be made available for section 8(a) contracting. Such notification should include an estimate of future requirements and of the probable date when the next procurement action will be initiated. In addition, the Materiel Manager will be requested to flag the

item for processing as outlined in (iv) of this section.

(C) A copy of notifications submitted to SBA in accordance with § 1201.705-5(b)(4)(i) of this section shall be furnished to DLA-PS.

(iv) The Materiel Manager will maintain a method for flagging those items identified by SBA as being currently procured under this program and will insure that the Specialist is notified of any planned procurements of those items so flagged at the earliest possible date; i.e., after the determination of a firm requirement, and, if possible, prior to the preparation of a purchase request.

(c) *Procedures.* (1) *Supplies, services, and research and development.*

(i) The SBA has been requested to submit requests for requirements to support approved business plans directly to the Specialist of the DLA activity responsible for the procurement and management of the commodities required with an information copy to DLA-PS.

(ii) Every effort will be made to support the SBA request with the specific commodities solicited or with appropriate substitute items. Such reviews will be coordinated with the Supply, Technical, Production, and Procurement staffs, as appropriate, for concurrence and procurement planning.

(iii)(A) Within 30 days of the receipt of the request, SBA will be notified of the extent of support that can be provided, indicating the date requirements will be available and reserved for section 8(a) contracting, and milestone dates for solicitation, completion of negotiations and contract award. This notification represents a firm DLA commitment to the extent outlined in ASPR 1-705.5(c)(1)(C). Information copies of this notification will be provided to DLA-PS. In the event the purchasing office is unable to support the SBA request with the item requested and no substitute items can be offered, complete data in support of the purchasing office position is to be forwarded by the Specialist to DLA-PS for further action with SBA.

(B) Concurrent with the commitment notification to the SBA, the purchasing office will develop a procurement plan to assure prompt solicitation, negotiation and contract execution.

(1) ASPR 1-2100 advance procurement planning and § 1201.2102, will be used as guidelines for developing procurement plans. Planning shall include projected requirements for follow-on contracts for the length of the nominated subcontractor's approved business plan, so as to preclude, if possible, a break in production.

(2) Realistic milestones shall be established to assure timely procurement actions. When it becomes appar-

ent that established milestones will not be met, problems causing potential slippage shall be identified and examined. Problems not resolved locally shall be expeditiously elevated to DLA-PS by the Specialist.

(3) Should the DLA procuring contracting officer need to retain approval authority on subcontract requests in special instances (e.g., health and safety items involving the QPL, etc.), a clause similar to the provisions below may be incorporated into the contract awarded to SBA.

Subcontracting for Contracts Awarded Pursuant to section 8(a), Small Business Act (DLA 1973 Oct). The subcontractor shall not further subcontract the manufacture/performance of any of the supplies or services required under this contract without prior written approval of the cognizant DLA procuring contracting officer.

The prohibition against further subcontracting is intended to apply only to that part of the work required by the contract, and represented to be performed by the SBA subcontractor. The subcontractor should not be precluded from purchasing raw materials, or other items, which, in accordance with industry practice, are normally purchased/subcontracted. This clause may be revised/modified as necessary to comply with the intent of this paragraph, and should be limited to special programs.

(4) Companies nominated to receive contracts awarded under section 8(a) of the Small Business Act have the same problems as established contractors, and in some instances may have even greater problems. Accordingly, DLA contracting officers must take particular care to include an appropriate economic price adjustment provision in section 8(a) contracts when the circumstances so warrant. Borderline cases should be resolved in favor of including an adjustment provision. In addition, pricing arrangements included in section 8(a) contracts (i.e. price adjustment provisions) shall be at least equal to those which would normally be included in contracts for like or similar items placed with regular commercial sources.

(5) ASPR section 1, part 19, stipulates that the requirement for first article testing and approval may be included in contracts as appropriate. Extensive use of this requirement will assist section 8(a) contractors in providing supplies conforming to specification requirements.

(6) When circumstances arise indicating a need to withdraw requirements previously committed for section 8(a) contracting, the purchasing office will seek SBA agreement for such withdrawal. If the SBA does not agree with such withdrawal, complete data supporting such proposed withdrawal shall be provided to the DLA Advisor's office for review and decision concerning the proposed withdrawal.

(vii) Review and approval of section 8(a) contracts have been delegated to DLA field procuring activities. Such review and approval actions shall be accomplished in accordance with § 1201.453.

(viii) The purchasing office will assure that follow-on section 8(a) contract support will be provided for that period of time reflected in the SBA approved business plan. To avoid the possibility of costly breaks in production, a supplemental procurement plan shall be established for each section 8(a) contract awarded to assure that additional follow-on requirements are made available as needed. A new SBA letter requesting the reservation of these follow-on requirements shall be requested by the Specialist and obtained from SBA at least 60 days prior to the day a follow-on contract is required to avoid a break in production. Milestones for accomplishment of the follow-on award will be established and followed. Where there is an indication that slippage might occur which will endanger meeting established milestones, DLA-PS, and the cognizant SBA regional office, will be immediately notified for resolution of the problem.

(ix) *Contract administration.* (A) ASPR section 1, part 18, stipulates that post-award orientation conferences with contractors be initiated to assure a clear understanding of the scope of the contract, the technical requirements, and the rights and obligations of the parties. In the case of section 8(a) contractors, the contracting officer, or technical representative of the purchasing office, should in all cases initiate a request for such a conference to assure that all matters requiring clarification or resolution are considered and contractual requirements are explained. Specific attention will be given to the requirements of statutes, executive orders, regulations and determinations establishing labor provisions and standards of the contract.

(B) Early notification to the SBA of deficiencies in contract performance by a section 8(a) firm is particularly important in the administration of 8(a) contracts.

(C) Whenever the subcontractor encounters problems which could jeopardize performance, DLA-PS and the cognizant SBA regional office shall be notified. The contracting officer or his authorized representative shall provide all reasonable assistance to the subcontractor to correct deficiencies which may arise.

(D) DLA-PS and the SBA regional office shall be notified at least ten days prior to the initiation of any adverse action against any SBA subcontractor.

(x) A copy of each section 8(a) contract, excluding general provisions,

shall be mailed to DLA-PS within 10 days after date of award.

(xi) Appropriate clearance should be requested as early as possible on 8(a) contracts subject to the Equal Opportunity Clause to preclude delays in awards.

(2) *Construction.* The authorities, procedures and guidelines established in § 1201.705-5(c)(1) are equally applicable to DLA section 8(a) contract program covering construction procurements.

§ 1201.706 Set-asides.

§ 1201.706-1 General.

(b) ASPR 1-704.3(b)(iii) provides that Small Business Specialists shall, prior to issuance of solicitations or contract modifications in excess of \$2,500, determine that small business concerns will receive adequate consideration including initiation of set-asides. This portion of ASPR also provides that set-aside determinations may be made jointly with PCOs or may be in the form of recommendations to them. Within DLA, PCOs shall assume primary responsibility for initiation of set-aside actions. The Small Business Specialists' responsibilities with respect to examining procurements for potential set-asides are to review actions proposed by PCOs taking into consideration the varied judgment factors involved, and to assist in resolving problems and overcoming impediments noted in connection with the establishment of set-asides. The review of all procurements over \$10,000 and all class set-asides shall be accomplished by use of DLA Form 1360, Record of Set-Aside Action (see § 1216.854). As indicated on the form, its use is optional for procurements valued from \$2,500 to \$10,000. If the DLA Form 1360 is not used for this category of procurement, a local form shall be used.

§ 1201.706-3 Review, withdrawal, or modification of set-asides or set-aside proposals.

(e) Regarding the small business set-aside appeal procedures provided to the SBA Procurement Center Representative, ASPR 1-706.3(e) provides that appeals shall be made to the Chief of the Purchasing Office. Within DLA, in the event the decision of the Chief of the Purchasing Office would approve the action of the contracting officer, the appeal shall be elevated to the Center or Depot Commander for final decision. If the Commander's decision also approves the action of the contracting officer, the SBA representative shall be advised and may proceed with further appeal actions as prescribed in ASPR 1.706.3(e).

§ 1201.707 Subcontracting with small business concerns.

§ 1201.707-3 Required clauses.

(a) When the provisions of ASPR 1-707.3(b) are applicable, the contracting officer shall make a determination of subcontracting potential on a case-by-case basis. Those cases where it is determined that the clause in ASPR 7-104.14(b) will not be included because of substantial subcontracting possibilities do not exist, should be coordinated with and concurrence obtained from the activity Small Business and Economic Utilization Specialist and, where available, the Small Business Administration (SBA) Procurement Center Representative (PCR), before the procurement action is released.

(b) If it is determined that all procurements for a particular product or service will not include the clause in ASPR 7-104.14(b), the determination and supporting data shall be coordinated with and concurrence obtained from the activity Small Business and Economic Utilization Specialist and the SBA PCR. Prior to the application of the determination to an actual procurement, a copy of such blanket determination, with supporting data, shall be furnished to HQ DLA, ATTN: DLA-PS, for coordination with SBA.

Subpart I—Responsible Prospective Contractors

§ 1201.905 Procedures for determining responsibility of prospective contractors.

§ 1201.905-1 General.

When the contracting officer makes a determination regarding the prospective contractor's responsibility that is contrary to that recommended in the preaward survey report, the reason for not following the preaward survey report recommendation shall be included in the contract file. In each instance wherein the preaward survey report recommendation is not followed, the case must be reviewed and concurred in at a level no lower than the Director of Procurement and Production. Procuring contracting officers shall advise the DCAS office performing the preaward survey as to the reason for not following the DCAS preaward survey recommendation.

§ 1201.905-4 Pre-award surveys.

(a) Preaward surveys shall be accomplished in accordance with ASPR 1-905.4, ASPR appendix F 200.1524, ASPR appendix K, and DLAM 4100.2, section VIII.

(b) A preaward survey shall be requested only when an award is contemplated to a firm from which a bid

or proposal has been received. Concurrent requests for preaward surveys on the same procurement will not be made except in emergency situations and/or when multiple awards are contemplated.

(c) Preaward surveys on sole source suppliers shall be limited to partial surveys. Factors requested for investigation shall be those that actually affect the contract, such as production backlog, financial, and quality.

(d) A preaward survey shall be made unless there is current quality, production and financial information available to waive the requirement. Even if the prospective contractor is currently producing or has successfully performed under a recent contract (within 1 year) and is being considered for an award of a similar undertaking, i.e., similar item and similar size contract, a partial survey may be required to determine current financial capability and capacity. However, if the same contractor is being considered for a much larger contract or a contract involving a fundamentally different undertaking, a complete or partial survey, as indicated by the circumstances, shall be requested. If the prospective contractor is newly entering into the manufacture of the goods sought by the Government or has no recent history of performance of a similar undertaking, a complete survey shall be requested.

(e) When limited information is required such as capacity and financial data, under the circumstances outlined in paragraphs (c) and (d) of this section, information can often be obtained through telephonic contact with the preaward monitor at the cognizant CAO, precluding the administrative effort associated with a partial preaward survey request.

(f) When a decision is made not to request a preaward survey, an explanatory memorandum will be included in the contract file establishing the contracting officer's decision to waive the preaward survey on proposed awards of \$100,000 and over.

(g) Quality Assurance Division personnel shall assist in the determination to request or waive preaward surveys, evaluate QA portions of preaward survey reports, and participate in preaward surveys when the contract will be for a complex item, the potential contractor has a poor quality history or when requested by DLA.

§ 1201.905-50 Capability surveys for workshops for the blind and other severely handicapped.

(a) The purchasing office, upon request from the Committee for Purchase from the Blind and Other Severely Handicapped, shall request a

capability survey to determine the capability of the Workshop(s) to produce specific items being considered for addition to the Procurement List.

(b) The purchasing office, when requesting a capability survey, shall make the request on DD Form 1524, Pre-Award Survey of Offeror-General. The purchasing office should emphasize factors concerned primarily with production capabilities (e.g., Factors 1, 2, 3, 5, 7, and 13 listed in Section III, DD Form 1524). The financial capability and accounting system factors will be excluded. When a capability survey is being requested, Section III, Remarks, DD Form 1524, shall clearly indicate the request is for a "Capability Survey" only.

(c) The purchasing office shall forward requests for capability surveys to the appropriate office, in accordance with ASPR K-201(c). The purchasing office shall furnish a copy of the completed survey to the Executive Director, Committee for Purchase from the Blind and Other Severely Handicapped.

(d) Capability surveys will be executed by the cognizant contract administration office in accordance with DLAM 8300.1, Section 3-1100.

Subpart L—Specifications, Plans and Drawings

§ 1201.1203 Availability of specifications, standards, plans and drawings.

The following modifications shall be made to the "Availability of Specifications and Standards" provision referenced in ASPR 1-1203.2(a):

(a) Renumber paragraph (b) to (c).

(b) Insert new paragraph (b):

(b) The minimum processing time required by the U.S. Naval Publications and Forms Center for mailing requested documents is seven (7) days after receipt of written requests and two (2) working days after receipt of telephone requests.

Subpart M—Procurement Planning

§ 1201.2100 Procurement planning.

§ 1201.2100-2 Applicability.

Procurement Plans will be required for all procurements other than those effected under ASPR section III, part 6. Procurement Planning will (a) be initiated at the time the Purchase Request is received by the Buyer (b) be prepared substantially in accordance with the sample format shown in § 1201.2102 and (c) be approved at a level higher than the Buyer, the approval level to be established by each DSC.

§ 1201.2102 Sample format and content of procurement plans.

PROCUREMENT PLAN

PR/MIPR Number: _____ Date Received: _____ Buyer: _____

Item Description: _____

Quantity: _____ Est. Unit Price: _____ Est. Total Price: _____

Delivery Schedule: _____

Supply Criticality (Priority): _____

Purchase History

Date	Quantity	Unit Price	Method of Procurement		Competitive Bids/Offers Number	Range
			Adv.	Neg.		

Considerations

Set Aside: Small Business _____ 100% Partial None _____ Labor Surplus: _____ 100% Partial None _____

Quantity Option: _____ % Price Escalation: _____ % First Article Test: _____

Cost/Pricing Data: _____ DD Form 633 _____ DD Form 633-7 Not Required _____ Open Contracts: _____ Yes No

Warranty: _____ Yes No _____ GFP Involved: _____

Proposed Method of Procurement

a. Negotiate: _____ Written _____ Oral _____ 10 USC 2304(a) _____ Advertise: _____ PIN: _____

b. Schedule: _____ Date _____

Issue Solicitation
Open/Close Solicitation
Evaluate/Review
Award

Remarks: _____

Signature Buyer: _____ Date: _____

Signature Approving Official: _____ Date: _____

Subpart N—Industrial Preparedness
Production Planning

§ 1201.2205 Existing authority affecting the industrial base.

(a) (1) (i) As part of the Industrial Preparedness Planning (IPP) Program, ASPR 3-216 authorizes the negotiation of contracts for selected supplies with certain planned producers. Negotiation is limited to those producers who have in effect, or those offerors who will agree to execute a DD

Form 1519 (Production Planning Schedule). Though not legally binding on the parties, this document signifies the Government's intention when authorized to convert such planned mobilization production schedules to contracts in order to minimize material shortages during national emergencies.

(ii) Pursuant to 10 U.S.C. 2304(a)(1), as implemented by ASPR 3-201, the Secretary of Defense may authorize IPP contract negotiation. In such

event, the Chief, DLA-PR, shall notify the Defense Supply Centers to issue Standard Letter contracts (§ 1207.850) in accordance with their emergency procurement plans to all producers having a current DD Form 1519 in effect. The Letter Contract will require the recipient to commence production immediately. Thereafter, the parties shall negotiate a definite contract in accordance with the Letter Contract's definitization schedule.

§ 1201.2206 Applicable procedures.

§ 1201.2206-50 Industrial preparedness planning packages.

(a) General. (1) The principal objective of IPP is not the completion of planning, but rather its final implementation. The implementation of plans for emergency procurement will depend on the degree of mobilization.

(2) DSCs shall develop and maintain the IPP packages for use during mobilization. IPP elements at the DSCs should maintain close coordination with procurement elements to ensure that contracting officers and other procurement personnel are familiar with the objectives of the program, and are aware of the existence of mobilization procurement plans.

(b) Composition of the Package. The IPP packages shall be established and maintained for all planned items. The package should include the Industrial Preparedness Plans (DLA Forms 1344 and 1345) and Standard Letter Contract.

(c) Industrial Preparedness Plan. (1) Industrial Preparedness Plans shall be established and maintained for planned items. The plan shall consist of information for the operation of DLA field activities, progress and status information for HQ DLA, ATTN: DLA-PR; and the necessary information required for an alternate to perform under emergency conditions.

(2) Continuous review shall be made to ensure inclusion of current data regarding requirements, planned producers, and production schedules. DSCs shall update or revise the plan at least yearly, or more frequently as changes warrant. Recipients of this plan shall be provided revised editions as appropriate.

(3) The IPP shall contain mobilization requirements and production data and shall reflect the specific planned procedures, their phased production schedules and other information relating to these schedules. Where plans are developed for several or many similar items, consideration should be given to grouping the data for such items into one plan. This will consist of consolidating the requirements for

all the items and the production for all the items scheduled with each planned producer. Normally, only unclassified data will be included in this plan. In the event a DSC desires to include classified data, HQ DLA, ATTN: DLA-PR, shall be advised of the necessity of such data prior to its inclusion.

(4) DLA Form 1345, Industrial Preparedness Plan, and DLA Form 1344, Planned Producers and Schedules, have been developed for use by all DSC's.

(d) *Standard Letter Contract (IPP)*. (1) The basic IPP implementing document shall be the Letter Contract (7-850). DSC's shall prepare the Letter Contracts as data becomes available and decisions made as to selected sources of supply and production schedules.

(2) DD Forms 1519 are informal production agreements not legally binding on either the Government or planned producers. These documents indicate the Government's intention to convert planned mobilization production schedules to contracts by negotiating on a selective basis as may be required to minimize material shortage during a limited war. Therefore, an additional procedural step is necessary to authorize the contractor to initiate his planned production.

(3) The authority for negotiating procurement in the event of a national emergency is 10 U.S.C. 2304(a)(1) cited in ASPR 3-201. Upon receipt of advice from the Secretary of Defense that expanded use of negotiated procurement under a national emergency is authorized, the Chief, DLA-PR, will notify DSC's to implement their emergency plans. The document to do this is the Letter Contract.

(4) Adequate cross-reference should be included to identify producers who are scheduled to produce more than one item. In such cases, only one Letter Contract should be furnished to the producer, listing all the items scheduled for production.

(5) Attachments such as specification, should be readily available to be included with the contract mailed to the producer. A letter, explaining the implementation procedure, shall be forwarded to each planned producer upon completion of planning to ensure that manufacturers are aware of this procedure.

(e) *Implementation of Plans*. (1) Plans shall be implemented only to the degree necessary to support a specific emergency. Full implementation of plans for mobilization procurement and release of Letter Contracts for planned items are contemplated under full mobilization.

(2) Under partial mobilization where the use of full Approved Force Level is not required, the DOD policy will be to acquire military support with minimum impact on commercial produc-

tion. The need for imposing economic controls on the civilian segment of the nation will depend on the ability to obtain the required military suppliers without disturbing the civilian economy.

(f) *Alternate Files Maintenance*. (1) Copies of each IPP package shall be furnished to HQ DLA, ATTN: DLA-PR; to the Alternate Files, Emergency Relocation Site; to the DLA Central File Repository; and to the Procurement Files at the Alternate National Military Command Center (ANMCC). Appropriate mailing addresses can be found in the DLA Field Activity War and Emergency Support Plan (FAWESP) by July 15 of each year. Since the prime objective of IPP is implementation, DSC's should ensure that these files are kept current. HQ DLA (DLA-PR) will annually inspect these files to ensure that they are being properly maintained for use in an emergency.

(2) DSC's should also furnish a copy of each item specification/drawing to the Alternate File, Emergency Relocation Site (ERS). Address for this file is contained in the War Emergency Support Plan (WESP).

Subpart O—Environmental Protection

§ 1201.2302 Administration and enforcement.

§ 1201.2302-3 Compliance responsibilities.

The procuring contracting officer shall report violations of the clean air or water standards which come to his attention in the performance of his regular duties to HQ, DLA, ATTN: DLA-PPR.

§ 1201.2302-5 Withholding award.

(a) If, pursuant to the certification in ASPR 7-2003.71, the successful offeror informs the contracting officer that the facility he proposes to use is being considered for inclusion in the EPA list of Violating Facilities, the contracting officer shall provide the following information telephonically to DLA-PPR (AUTOVON 284-6431). Written confirmation will be requested if needed:

(1) Solicitation number;

(2) Product or service being procured;

(3) Quantity and dollar amount of proposed contract;

(4) Name and address of proposed awardee;

(5) Address and owner of facility being considered for listing by EPA;

(6) Date of communication from EPA; and

(7) Basis for proposed inclusion in the EPA list of Violating Facilities.

(b) In the event that EPA requests a fifteen day delay in award, and such delay would be prejudicial to the Government's interest, as stated in ASPR 1-2302.5, the contracting officer shall

execute a Determination and Findings (D&F) to that effect. Upon approval of the D&F by the Chief of the Purchasing Office, DLA-PPR shall be notified, and will inform EPA of the decision to proceed with award.

PART 1202—PROCUREMENT BY FORMAL ADVERTISING

Subpart A—Use of Formal Advertising

Sec.

1202.104 Types of Contracts.

Subpart B—Solicitation of Bids.

1202.201 Preparation of Invitation for Bids.

1202.201-50 Right to Apply FOB Origin Offer.

1202.203 Methods of Soliciting Bids.

1202.203-50 Other Distribution.

1202.205 Bidders Mailing Lists.

1202.205-2 Removal of Names from Bidders Mailing Lists.

1202.205-4 Excessively Long Bidders Mailing Lists.

1202.205-6 Pre-Invitation Notices.

Subpart C—Submission of Bids.

1202.303 Late Bids, Modifications of Bids or Withdrawals of Bids.

1202.303-5 Hand-carried Bids.

Subpart D—Opening of Bids and Award of Contract.

1202.404 Rejection of Bids.

1202.404-1 Cancellation of Solicitation.

1202.406 Mistakes in Bids.

1202.406-3 Other Mistakes.

1202.406-4 Disclosure of Mistakes After Award.

1202.406-50 Actions Referred to Higher Authority.

1202.407 Award.

1202.407-1 General.

1202.407-3 Discounts.

1202.407-6 Equal Low Bids.

1202.407-8 Protests Against Award.

1202.407-50 Other Factors to be Considered in Determining Price Reasonableness.

1202.408 Information to Bidders.

1202.408-1 Unclassified Awards.

1202.450 Requests for Decision by the Comptroller General.

AUTHORITY: The provisions of this Subchapter A are issued under 5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DoD Directive 5105.22, January 5, 1977.

Subpart A—Use of Formal Advertising

§ 1202.104 Types of contracts. For economic price adjustment policy applicable to formally advertised procurements (see § 1203.404-3).

Subpart B—Solicitation of Bids

§ 1202.201 Preparation of invitation for bids.

§ 1202.201-50 right to apply FOB Origin offer.

SECTION D, EVALUATION FACTOR FOR AWARD

(i) A provision substantially as below may be included in invitations for bids when ap-

propriate. The intent of the provision is to permit the Government to award FOB origin offers that otherwise could not be covered in a formally advertised procurement. Example—items 1 and 2 are for the same product, but different item numbers are used because of the different destinations. FOB origin offers are permitted. Bidders A and B bid FOB origin on item 1. No bids are received on item 2. Item 1 is awarded to Bidder A. Under present conditions, item 2 would have to be resolicited. With the below provision, and provided the bidder had not specified otherwise, the Bidder B offer could be applied against item 2. Assuming Bidder B's price was reasonable, item 2 could be awarded to Bidder B and the need for a resolicitation negated.

Right to Apply FOB Origin Offer. Unless otherwise specified by the Bidder, the Government may apply an FOB origin offer against any FOB origin item or subitem for the same product or supplies.

§ 1202.203 Methods of soliciting bids.

§ 1202.203-50 Other Distribution.

One information copy of each invitation for bids involving the production testing of items will be forwarded at time of issue to HQ DLA, ATTN: DLA-PR, and DLA-SER in accordance with DLAR 4125.1.

§ 1202.205 Bidders mailing lists.

§ 1202.205-2 Removal of names from bidders mailing lists.

Bidders mailing lists shall be reviewed and inactive suppliers removed.

§ 1202.205-4 Excessively long bidders mailing lists.

(b) **Rotation of Lists.** Mailing lists may be rotated or pre-invitation notices issued where there are a substantial number of solicitations and bidders lists which are used repetitively.

§ 1202.205-6 Pre-invitation notices.

Pre-Invitation notices may be used (a) to determine competitive interest, or (b) to avoid the reproduction and mailing of unnecessary quantities of solicitations.

Subpart C—Submission of Bids

§ 1202.203 Late bids, modifications of bids or withdrawal of bids.

§ 1202.303-5 Hand-Carried Bids.

Suppliers shall be notified that it is a responsibility of the bidder to place his bid in the bid depository if a bid is hand-carried. Each DLA activity shall establish procedures to ensure that Government personnel do not handle, stamp, or mark the bid envelopes prior to placement of the bids in the depository by the supplier.

Subpart D—Opening of Bids and Award of Contract

§ 1202.404 Rejection of Bids.

§ 1202.404-1 Cancellation of solicitation.

Determination to cancel invitations for bids made pursuant to ASPR 2-404.1 shall be in writing and shall describe the items solicited, quantities, number of bids received, prices, a discussion of the basis for cancelling and explanation of why it is a compelling reason.

§ 1202.406 Mistakes in bids.

§ 1202.406-3 Other mistakes.

Authority to make the determinations set forth in ASPR 2-406.3(a)(1) is delegated to Counsel at DLA procuring activities and purchasing offices without power of redelegation. Requests for the determinations required by ASPR 2-406.3(a) (2), (3), and (4) will be forwarded through Heads of Procuring Activities to the Counsel, DLA.

§ 1202.406-4 Disclosure of mistakes after award.

A copy of the determination and finding will be attached to all copies of the contract modification and a copy of the modification will be forwarded to the Counsel, DLA, when executed.

§ 1202.406-50 Actions referred to higher authority.

Mistakes in bids requiring action by higher authority or mistakes in bids in which the HPA desires that the determinations be made by higher authority shall be forwarded to the Counsel, DLA.

§ 1202.407 Award.

§ 1202.407-1 General.

It is particularly important that copies of the award document furnished for contract administration and finance purposes include detailed information as to acceptable additions or changes made by a bidder in the bid. The award document shall include the following data to the extent applicable:

(a) A list of the items or lots accepted with the quantity, unit price, and total price of each item;

(b) An indication of the extent to which award is made on the basis of f.o.b. destination or f.o.b. origin;

(c) Any discount offered by the successful bidder, whether or not such discount was considered in the evaluation of bids;

(d) When the invitation for bids authorizes bids on the basis of brand name or equal the brand, model, part number, and any other identifying characteristics of the item to be furnished by the successful supplier;

(e) The place of manufacture of the supplies or the performance of services awarded and the name of the supplier, when different from that of the contractor;

(f) The place of inspection and acceptance and the name of the activity authorized to effect inspection and acceptance on behalf of the Government;

(g) When the invitation for bids includes the requirement for minimum size of shipments or guaranteed maximum shipping weights (and dimensions, if applicable), and award is made f.o.b. origin, a clause as follows:

NOTE TO ADMINISTRATIVE CONTRACTING OFFICER

This award has been made on the basis of Guaranteed Maximum Shipping Weights or dimensions, and/or Minimum Size of Shipments as specified. Take action in accordance with DLAM 8105.1, Sec. 19-210, if it becomes evident that the guaranteed maximum shipping weights or dimensions will be exceeded, or if the contractor tenders delivery of less than the minimum size shipments specified, in order that action may be taken to adjust the contract price.

(h) The time of delivery;

(i) The place of delivery;

(j) The place for the submission of invoices and payment;

(k) A statement that the award confirms a notice of award;

(l) A statement that the progress payment clause is a part of the contract; and

(m) A provision for advance payments.

§ 1202.407-3 Discounts.

The clause in ASPR 7-2003.35 shall be included in all invitations for bids, using the minimum periods of 20 calendar days where delivery and acceptance are at point of origin and 30 days where delivery and acceptance are at destination, except for subsistence items for which DPSC retains the payment function which, by industry practice, the discount period is 10 calendar days.

§ 1202.407-6 Equal low bids. (See also ASPR 1-111).

Whenever identical or equal bids are received pursuant to formal advertising and, in the opinion of the contracting officers, are indicative of collusive bidding, follow-the-leader pricing, related low bids, division of business, uniform estimating systems, or other practices designed to eliminate competition or to restrain trade, a report of the facts and pertinent information available which might tend to establish possible violation of the antitrust laws shall be forwarded to the Counsel, DLA.

§ 1202.407-8 Protests against award.

(a) **Protests Before Award.** (1) When it is known that a protest against the

making of award has been made to a higher Headquarters or to the Comptroller General, no award shall be made until the matter is resolved unless the determination required by ASPR 2-407.8(b)(3) has been made by the contracting officer and approved by the Executive Director, Procurement, DLA, after coordination with the Counsel, DLA. The Counsel, DLA, shall be responsible for obtaining the views of the Comptroller General in such cases in accordance with ASPR 2-407.8(b)(2).

(i) Requests for approval of the contracting officer's determination must include the following information:

(A) If the contracting officer's report has not been submitted to HQ DLA, a summary of the protest and the facts bearing on it;

(B) The name of the proposed awardee;

(C) The proposed award price and quantity;

(D) A statement as to fair and reasonable price;

(E) A statement as to whether the proposed award is to the low offeror;

(F) If the proposal awardee is not low, the reason award will be made to other than the low offeror; and

(G) A statement that award will be made immediately upon receipt of the requisite approval.

(ii) The determination itself must contain a full justification for proceeding with award. For example, a request based on urgency (ASPR 2-407.8(b)(3)(i)) shall include:

(A) The current supply status of the item;

(B) The procurement leadtime;

(C) If the procurement is for stock, the estimated monthly demand;

(D) An explanation of why the time cannot be temporarily foregone by requiring activities; and

(E) A discussion of the feasibility of temporarily filling the requirement by means of local purchase.

(iii) As another example, a request based on an expiring offer (ASPR 2-407.8(b)(3)(iii)) shall include:

(A) The price of the expiring offer;

(B) The price(s) of the next offeror(s) in line for award;

(C) The date of the most recent request to the offeror to extend his offer; and

(D) The offeror's response to the most recent request to extend.

The above examples are not the only situations in which award could be made, but are provided to show the degree of thoroughness required in documenting the justification for proceeding with award.

(2) Reports on protests submitted for final resolution to a level of authority above the Head of a Procuring Activity shall be forwarded in triplicate to the Counsel, DLA. Reports on such protests shall include the following information:

A signed statement from the person making the protest setting forth the facts on which the protest is based and any additional supporting evidence;

A signed statement when relevant, from other persons or bidders affected by or involved in the protest, setting forth the protest, setting forth the facts with respect to their position in the matter and any additional supporting evidence;

A copy of the bid submitted by the protesting bidder, and a copy of the bid of the bidder who is being considered for award, or whose bid is being protested;

A copy of the invitation for bids including, where practicable, pertinent specifications relevant to the protest;

A copy of the abstract of bids;

Any other documents which are relevant to the protest; and

A statement signed by the contracting officer setting forth his findings, actions and recommendations in the matter together with any additional evidence or information deemed necessary in determining the validity of the protest. If the award was made pending resolution of the protest, the contracting officer's statement will include the determination prescribed in ASPR 2-407.8(b)(3).

(c) *Protests After Award.* Where a protest is received after the award of the contract the following action will be taken:

(1) Where it reasonably appears that the award may be held invalid, and a delay in receiving the supplies or services is not prejudicial to the Government's interest, the contracting officer should seek a mutual agreement with the successful bidder to "stop work" on a no-cost basis.

(2) If the contractor refuses to enter into such a mutual agreement, the Head of the Procuring Activity may direct the contracting officer to issue a "stop work" order unless the Head of the Procuring Activity determines that receipt of the supplies or services is so urgent that such an order would be prejudicial to the interest of the Government.

(3) Where guidance from higher authority on the withholding of contractor performance is necessary the matter will be submitted to the Counsel, DLA.

(4) Where it is known by the purchasing activity that a protest after award has been lodged directly with the Comptroller General, the documents required by (b) above will be forwarded to the Counsel, DLA.

§ 1202.407-50 Other factors to be considered in determining price reasonableness.

If in the opinion of the contracting officer the formal advertising procedure in itself does not ensure competition sufficient for arriving at a fair

and reasonable price, he will also consider valid criteria, such as, but not limited to:

(a) Prices paid by his or other Government purchasing activities on past procurements;

(b) Price trend information from the daily press, trade, or Government publications;

(c) Current market prices for comparable quantities;

(d) Extent of comparable pricing;

(e) Cost analysis of similar procurements; and

(f) Contractors' published commercial price lists.

In those instances, where this additional analysis is made, the contract file will be documented to reflect the actions taken to determine the reasonableness of bid prices.

§ 1202.408 Information to bidders.

§ 1202.408-1 Unclassified awards.

Notification to unsuccessful bidders should be given promptly after an award has been made. It should not be delayed pending preparation and distribution of contractual documents. Generally, a form postal card is adequate for notification to unsuccessful bidders. However, in cases where a bidder is apparently low based on a comparison of bid prices only, the notification should take the form of a letter including in addition to the minimum requirements set forth in ASPR 2-408, the specific reasons for rejection of the lower bid. This is especially important where rejection results from a transportation evaluation, a negative preaward survey, or for any reason not readily apparent to the bidder. The following is an example of such a letter. This letter may be modified to fit the specific circumstances of the procurement.

Gentlemen:

Receipt is acknowledged of your bid in response to our Invitation for Bid No.

This is to inform you that award was made to:

Contractor No.	Price	City	State	Item

Your interest in bidding on the requirements of this Center is appreciated; however, we were unable to make the required determination that your company is "responsible" within the meaning of that term as defined in paragraph 1-902 of the Armed Services Procurement Regulation. The information upon which our decision was based was contained in a preaward survey which was issued by — (insert name of appropriate activity). Further details with respect to their findings will be furnished by that activity if you so request.

Your name will be retained on the bidders list to receive future solicitations.

A letter such as the above, if complete and issued promptly, should minimize further correspondence and result in improved contractor relations.

§ 1202.450 Requests for decision by the Comptroller General.

Where a decision by the Comptroller General is desired on procurement or disposal matters such as mistakes in bids, remission of liquidated damages, reformation of contracts or other contract issues, the request will be forwarded to the Counsel, DLA. Each case submitted for a Comptroller General decision will be accompanied by an administrative report which shall include a summary of the matter at issue, the recommendation of the procuring activity, and all documents and information deemed pertinent to the issue.

PART 1203—PROCUREMENT BY NEGOTIATION

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AUTHORITY: The provisions of this Subchapter A are issued under 5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DOD Directive 5105.22, January 5, 1977.

Subpart A—Use of Negotiation

§ 1203.103 Records and reports of negotiated contracts.

An information copy of each negotiation document involving the production testing of items shall be forwarded at time of issue to HQ DLA, Attn: DLA-PR.

Subpart B—Circumstances Permitting Negotiation

§ 1203.202 Public exigency.

§ 1203.202-2 Application.

A procurement of material to effect necessary and emergency repairs to a broken water main would be appropriate under ASPR 3-202 and this section, *Provided*, That the emergency conditions require immediate replacement of defective materials. This authority could also properly be cited for the emergency procurement of packing material required to effect an emergency air or rail shipment. The fact bearing on the emergency situation must clearly be shown in the determination and findings in sufficient detail to explain clearly the necessity for purchasing without formal advertising. The contracting officer's justification must be supported by the existence of specific emergency circumstances which in themselves relate to the particular purchase being effected. The facts bearing on the situation must clearly support the compelling and unusual urgency and indicate the extent to which the Government would be injured, financially or otherwise.

§ 1203.209 Perishable or nonperishable subsistence supplies.

§ 1203.209-50 Procurement of fresh fruits and vegetables by best value selection.

(a) Fresh fruits and vegetables cannot be described in the usual manner and their specifications are normally inadequate to provide a basis for advertising for bids. It is in the best interest of the Government to procure fresh fruits and vegetables in growing and storage areas and terminal markets after visual inspection by experienced and knowledgeable personnel at the time and place such items are offered.

(b) In the application of (a) of this section, procurements shall be made on a competitive basis to the maximum extent practicable and the best value, price, quality, and other factors considered, shall be procured.

§ 1203.215 Negotiation after advertising.

§ 1203.215-2 Limitation.

ASPR 3-215.2 requires two Secretarial determinations and findings (a) for the general or preliminary authority to negotiate after advertising, and (b) with regard to the particular contract being negotiated and the fact that the negotiated price is lower than the lowest rejected bid price of a responsible bidder. (See ASPR J-502(e).) When the contracting officer considers that bid prices received after formal advertising are unreasonable as to all or part of the requirements, or were not independently reached in open competition, he shall, prior to initiating negotiations submit a proposed determination and findings, approximating in format shown in ASPR J-502(e), for Secretarial signature in accordance with the procedures in ASPR/DSRP 3-306. Partial awards made at bid prices considered reasonable should be indicated in the request for authority to negotiate. If the contracting officer considers that bid prices on all or part of the requirements were not independently reached in open competition, he shall, in addition to requesting Secretarial authority to negotiate under 10 U.S.C. 2304(a)(15), submit the report thereon required by ASPR 1-111.

Subpart C—Determinations and Findings

§ 1203.302 Determinations and findings by the Secretary of a Department.

All requests for Secretarial authority to negotiate, and their attached determination and findings, shall be submitted to HQ DLA, Attn: DLA-PP in triplicate.

§ 1203.303 Determinations and findings below the secretarial level.

(b) The authority to make class determinations with respect to authority

to enter into contracts by negotiation pursuant to ASPR 3-210 is delegated to the Executive Director, Procurement, Headquarters Defense Logistics Agency, and the Heads of Procuring Activities (or Deputies in their absence). Redlegation of this authority is not authorized.

§ 1203.303-50 Determinations and findings for procurement negotiated under 10 U.S.C. 2304(a)(10).

Each determination and finding prepared by contracting officers to justify the use of 10 U.S.C. 2304(a)(10) for noncompetitive procurement due to lack of or inadequacy of technical data shall be supported by a written statement obtained from the requiring agency showing:

(a) The actions being taken (1) to avoid subsequent noncompetitive procurements of the items or services and (2) to obtain the data prescribed in ASPR 3-108(d); or

(b) A complete explanation of the reasons why efforts to obtain competitive procurements would be unavailing, and, therefore actions that would permit competition are not being taken.

§ 1203.306 Procedure with respect to determinations and findings.

(a) Requests for authority to negotiate individual contracts, or a class of contracts under the authorities of 10 U.S.C. 2304(a)(11) through 10 U.S.C. 2304(a)(16), as implemented by ASPR 3-211 through ASPR 3-216 and Appendix J, require the approval of the Assistant Secretary of Defense (MRA&L). Such requests shall (1) contain in the letter of transmittal of the submitting procuring activity, a complete statement of facts and other data necessary to support the applicability of the cited negotiation authority, and (2) include, on a separate plain paper, a determination and findings prepared for the appropriate signature.

(b) Requests for the granting of Secretarial authority to negotiate under 10 U.S.C. 2304(a)(13) or 10 U.S.C. 2304(a)(16) will be signed by the Head of the Procuring Activity or his Deputy.

§ 1203.306-50 Class determinations and findings (CDFs).

(a) CDFs may be utilized when appropriate for negotiating a number of contracts for the same or related items where the use of individual determinations and findings would result in a repetition of the same set of facts or circumstances. CDFs should be submitted for Secretarial signature only when:

(1) Several procurements are to be effected within a reasonable period of time (normally one year or less) and are for items which are so related as to constitute a logical and distinctive category;

(2) The required suppliers or services are such that they can be secured only by negotiation, such as—

(i) Items of standardized supplies meeting the criteria set forth in ASPR 3-213; or

(ii) Research and development programs which have not reached the production state and for which, consequently, adequate drawings, specifications, or other technical data are not available for formal advertising; or

(3) The nature of the required supplies is such that it is not only technical or specialized but the presence of military urgency or limited numbers of qualified supplies (as related to previous investments by the Government of the supplies, extend periods required for preparation for manufacture, or continued availability of the suppliers in the event of a national emergency) preclude the use of formal advertising during the proposed effective period of the CDF.

(b) Class determinations and findings may not be extended beyond their effective periods as approved by the Secretary. When the authority of such CDF is required for an additional period, a new request therefor, together with a new CDF shall be submitted in accordance with this Regulation. Such new requests shall set forth a summary of the procurement actions completed under the earlier CDF as well as those actions contemplated under the new request.

(c) Heads of Procuring Activities should periodically review the necessity for continued use of a CDF during its effective period to assure that circumstances supporting the granted negotiation authority continue to be present.

Subpart D—Types of Contracts

§ 1203.404 Fixed-price contracts.

§ 1203.404-3 Fixed-price contracts with economic price adjustments.

(a) When none of the ASPR economic price adjustment clauses are applicable, a special economic price adjustment clause may be developed in accordance with ASPR 2-104 or 3-404.3(c). Hereafter, however, such new clauses and revisions thereto (including revisions to clauses already in use) shall be submitted to HQ DLA (DLA-PPR) for pre-solicitation review and approval. This requirement does not apply to the one-time revision of a clause during the contract negotiation process.

(b) The Chief of the Purchasing Office shall approve any ceiling exceeding 10 percent in any local EPA clause. Such approval may cover more than one contract over a definitely stated period of time not to exceed one year. This authority (as applied to ASPR EPA clauses as well) shall not be delegated.

Subpart E—Solicitations of Proposals and Quotations

§ 1203.501 Preparation of request for proposals or request for quotations.

(b) Contract Forms and Uniform Contract Format.

(2) The SAMMS Automated Small Purchase System (SASPS) Phase II provides for the mechanical printing of solicitations (RFQs) by SAMMS for procurements with an estimated value of \$10,000 or less. The system is designed to issue RFQs using DLA Form 1231, Request for Quotation.

SECTION C, INSTRUCTIONS, CONDITIONS AND NOTICES TO OFFERORS/QUOTERS

(iv) The following Products Offered provision is for use in the negotiated procurement of replacement parts and assemblies which are identified only by the manufacturer's name, part number, and a brief description. The purpose is to negate paragraph 2(d) of SF 33A which reads:

"Offers for supplies or services other than those specified will not be considered unless authorized by the solicitation." When the provision is applicable, the following will be inserted after the item description:

Offer based on:
Manufacturer's name ——— Part No. ———

The provision will not be included in solicitations covering parts or assemblies which are being negotiated under such authorities as ASPR 3-202, 3-210.2(i) (xiii) or (xv) 3-212 when it is necessary to restrict the procurement to a particular manufacturer or the certain approved sources (see ASPR 1-313(c)). The provision, when used, shall be verbatim, except that the acronym CLIN may be substituted for the word "item".

PRODUCTS OFFERED (1970)

(a) Products offered must either be identical or functionally, physically, mechanically, and electrically interchangeable with the products cited in each procurement identification description of this solicitation.

(b) For evaluation purposes offerors must indicate, by marking the appropriate block(s), which of the following situations is applicable to each item which they are offering and furnish whatever supporting information is required below. "Failure to furnish complete data and information required to support situations (2), (3) and (4) below may preclude consideration of your proposal."

□ (1) For items ——— will furnish the cited manufacturer's product bearing the number specified.

NOTE.—If more than one manufacturer's number is specified in the schedule, the offeror must insert beneath the applicable item(s) of the schedule the manufacturer's name and number which he is offering.

□ (2) For items ——— will furnish a product manufactured in accordance with the cited manufacturer's drawing or specification, and certified identical to, but bearing a different number.

NOTE.—This block must be completed only by offerors manufacturing the item de-

scribed in the schedule for the company or firm whose name and number is specified. Offerors must insert beneath the applicable item of the schedule the substituted manufacturer's name and part number. In addition, the offeror must furnish a copy of the drawing or specification for the part number as originally cited in the schedule, or other information to establish that the offeror will furnish the same item as described in the schedule, but having a different number.

□ (3) For items — will furnish a product determined under prior military contracts, either as a prime or subcontractor to be functionally, physically, mechanically and electrically interchangeable with the product cited in this solicitation though not manufactured in accordance with the cited manufacturer's drawing or specification.

NOTE.—Offerors relying on this paragraph (3) must insert beneath the applicable item of this solicitation the substituted manufacturer's name and part number, and in addition, furnish sufficient data to suitably substantiate the item as acceptable. As a minimum, the following data must be furnished (1) copy of Contract or Purchase Order under which furnished, and (2) copy of a drawing to which made.

□ (4) For items — will furnish a product which is equal in all material respects to the product referenced in the item description. The following Note is applicable:

Note (a) □ Note (b) □

NOTE.—(a) The Government does not have detailed data for the item referenced in the procurement identification description. Therefore, offerors relying on this paragraph (4) must furnish with their offers drawings and other data which will clearly describe the characteristics and features of their product. In addition, offerors must furnish drawings or other data covering design, materials, performance, etc., of the product cited in the schedule sufficient to enable the Government to determine the offeror's product is equal to the product named in the schedule.

NOTE.—(b) Offerors relying on this paragraph (4) must furnish with their offers drawings and other data which will clearly describe the characteristics and features of their product.*

NOTE.—Offers relying on this paragraph (4) must insert beneath the applicable item of this solicitation the substituted manufacturer's name and number.

SECTION D, EVALUATION FACTORS FOR AWARD

(iii) Discount provisions (see § 1202-407.3);

§ 1203.509 Protests against award.

In any protest to the General Accounting Office of a negotiated procurement where a written Determina-

*If offerors desire to restrict the Government's use of data submitted with their proposals for evaluation purposes, the data must bear the legend prescribed by ASPR 3-507.1(a). In the event an award is made to an offeror submitting such data, the Government will have unlimited rights to use such data, unless the data submitted bears the legend set forth in ASPR 3-507.1(a).

tion and Findings (D&F) is required to support negotiation, a copy of the D&F will be included with the protest report.

§ 1203.550 Distribution of copies.

In addition to the distribution of requests for proposals and requests for quotations in ASPR 1-1002, one information copy of each such solicitation document for the production testing of items will be forwarded, at time of issue, to HQ DLA, Attn: DLA-PR.

Subpart F—Small Purchase and Other Simplified Purchase Procedures

§ 1203.604 Competition and price reasonableness.

§ 1203.604-1 Purchases not in excess of \$500.

Action to verify and document the reasonableness of the price of purchases not in excess of \$500 need be taken only when the buyer or contracting officer suspects, or has information to indicate that the price may not be reasonable, e.g., comparison to previous price paid, personal knowledge of the item involved or appearance of the item on the SAMMS Automated Small Purchase System (ASPS) Report F-108. When action is taken to verify reasonableness of price, DD Form 1784, "Small Purchase Pricing Memorandum" shall be used.

§ 1203.604-50 Pricing techniques in the absence of adequate price competition.

(a) The techniques of comparing the items to a similar competitive or catalog item offers the best assurance of fair and reasonable pricing in small purchases. In the majority of cases over \$500 involving noncompetitive and non-catalogued items, this method should be employed to determine price reasonableness. It is not necessary to locate an identical item or to compare every feature of the two items. Quantity, packaging and other factors must be considered in arriving at an independent estimate of a reasonable price for the individual procurement. Abstracts of bids maintained by the purchasing office may be useful in this regard. Commercial catalogs and price lists should also be used.

(b) Visual examination of warehouse samples, drawings and/or DD 146 descriptions can be of considerable value in determining that a price is fair and reasonable. Often the actual manufacturer is revealed by this examination. Sources solicited will include any manufacturer(s) revealed by visual examination.

(c) When other methods available to procurement personnel through use of the Decision Logic Chart (See ASPM No. 2) are unproductive, technical assistance by the Directorate of Technical Operations should be obtained for

use as a factor in the buyer's pricing determination.

§ 1203.604-51 Minimum billing and service charges.

(a) Procurement personnel should avoid placing orders with vendors who have a "minimum billing" or "service charge" policy wherever possible. In sole source situations, the following alternatives should be explored before placing an order:

(1) Make a concerted effort to consolidate orders with other buys from the same vendor; or

(2) With customers' permission, increase the quantity of the buy.

(b) If the foregoing efforts are to no avail, DLA buying activities when writing orders with vendors having such policies, will identify the unit price and amount for each item ordered and the minimum billing or service charge.

(c) When a responsible, responsive offeror is low on an individual procurement, even though he includes a DD 250 charge in his price, he clearly should receive award. However, no indefinite delivery type contracts (IDTCs), blanket purchase agreements (BPAs), or basic ordering agreements (BOAs) shall be executed containing a provision for reimbursement of contractors for preparation of the DD 250.

§ 1203.605 Blanket purchase agreement (BPA).

§ 1203.605-2 Limitation on use.

The maximum aggregate amount, if any, of all requests to be issued against one BPA shall be prescribed by the HPA.

§ 1203.605-50 Establishment of blanket purchase agreements with Federal supply schedule (FSS) contractors.

(a) While BPAs may be established with FSS contractors for both non-FSS items and FSS items, a distinction between such items should be made.

(b) A BPA with a FSS contractor for non-FSS items which can be interpreted to cover FSS items because of a generic item description should contain a statement to the effect that the BPA excludes all items on FSSs.

(c) If it is desired to establish a BPA with a FSS contractor for items on a FSS, the agreement shall be consistent with the provisions of the applicable FSS, i.e., period of agreement, terms, and conditions. The agreement should be limited to a simplification of purchasing techniques such as placing of orders orally and obtaining monthly consolidated billings.

§ 1203.605-51 Quantity break provision for inclusion in small purchases.

(a) As used herein "quantity break" is a reduction in unit price for a specified larger quantity.

(b) To obtain the lowest possible prices in small purchases, it is necessary that the Government take advantage of quantity breaks wherever practicable.

(c) For the purpose of establishing that a quantity break does or does not exist, a provision substantially as follows should be included in small purchase solicitations, except (i) where the contracting officer decides that it is impractical and would serve no useful purpose, or (ii) where the procurement will be effected by automation:

QUANTITY BREAK

The quoted price is effective for quantities from — to —. Price for next higher quantity break would be —.

(d) Should it appear that it is in the best interest of the Government to procure a larger quantity, so as to take advantage of a lower unit price, the item manager should immediately be provided the details and an amendment to the purchase directive requested. If the item manager indicates that the quantity cannot be increased, then the contracting officer should document the contract file accordingly and proceed with purchase of the originally specified quantity.

§ 1203.606-50 Fast payment procedure.

All DLA purchasing activities awarding procurement authorizing "FAST PAY" shall specify inspection and acceptance at destination. If either inspection or acceptance at origin is required or authorized the use of "FAST PAY" is NOT authorized.

Subpart H—Price Negotiation Policies and Techniques

§ 1203.801 Basic policy.

§ 1203.801-2 Responsibility of contracting officers.

(c) Prior to referral to HQ DLA, the Commander, or in his absence, the Acting Commander, shall make a determination on a case-by-case basis whether or not to personally negotiate with the contractor involved and attempt to delete those elements of the contractor's offer that render his price or profit unreasonable. In those cases where it is determined that the Commander should not personally conduct negotiations, a detailed memorandum setting forth the rationale shall be forwarded with the referral to HQ DLA, Attn: DLA-PP. While it is recognized that the magnitude of the effort must be commensurate with the value of the procurement it is imperative the best effort be made at each successive level of authority prior to forwarding cases to this Headquarters because this Headquarters intends to actively enter into the negotiation at that point in time. In appropriate cases

where Headquarters efforts fail the problem will be escalated to the Office of the Assistant Secretary of Defense.

(d) Occasionally, there may be instances where the price is not as close to the negotiation objective as the Contracting Officer would like to be but may not be judged unreasonable. In such cases the file should contain a positive statement that the price is considered fair and reasonable under the circumstances. The circumstances should then be fully enumerated so as to provide any reviewer with a full understanding of what transpired and why the price is indeed fair and reasonable. On any price reasonableness determination, however, the Contracting Officer shall determine the price either to be reasonable or unreasonable.

§ 1203.805 Written and oral discussions.

§ 1203.805-1 General.

(a) A prenegotiation briefing shall be conducted for all negotiated procurements over \$10,000 so that each will have had a prenegotiation objective review. The briefing level and content for negotiated procurements between \$10,000 and \$100,000 shall be set by the Director, Procurement and Production. For all negotiated procurements except subsistence estimated to amount to \$100,000 or more, the briefing shall be for the Director/Deputy Director, Procurement and Production. The threshold for subsistence procurements requiring a review by the Director/Deputy Director, Procurement and Production will be established at a level designated by the HPA. Procurements, other than those for perishable subsistence, consummated at a Defense Subsistence Region (DSR) may be reviewed by the Chief of the Purchasing Division at the DSR. As a minimum, the briefing for negotiated procurements estimated to amount to \$100,000 or more shall cover:

- (1) The procurement situation.
- (2) Previous price history.
- (3) Analytical methods utilized in establishing the price objective.
- (4) For procurements requiring the submission of cost or pricing data, the major differences between the proposed negotiation objective and the contractor's proposed price, DCAS input and audit recommendation and the proposed negotiation objective with supporting rationale.
- (5) For all other procurements, the major differences between the contractor's proposed price and the proposed negotiation objective, together with rationale supporting the negotiation objective.
- (6) Negotiation plan, whether phone or face to face.
- (7) Anticipated negotiation problems and proposed solutions.

(b) A memorandum summarizing the principal elements of the briefing, attendees and results shall be prepared for incorporation into the contract file.

(c) The following are exempt from the requirement for prenegotiation briefings:

- (1) Perishable subsistence procurements.
- (2) Subsistence Commodity Market items which are geared to marketing exigencies, such as coffee, flour, and salad oil.
- (3) When a petroleum procurement consists entirely of unrelated line items (those which are consolidated solely for administrative purposes) the briefing may be conducted at a level lower than the Director/Deputy, Procurement and Production, when no single line item is \$100,000 or more, even though the total procurement is \$100,000 or more.

§ 1203.807-2 Requirements for price or cost analysis.

(a) *General.* The cost/price analysis element will prepare an evaluation of the contractor's proposal in every procurement requiring the use of cost or pricing data or a field pricing support report.

(b) *Cost/price analysis.* (1) The cost/price element shall prepare a cost/price analysis for formally advertised procurements of \$100,000 or more when a sole responsive bid is received and for negotiated procurements of \$100,000 or more.

(2) The requirement for cost/price analysis by the cost/price analysis element may be waived by the Contracting Officer for a negotiated procurement resulting in adequate price competition when the initial offer is to be accepted under the circumstances set forth in ASPR 3-805.1(a). Except when cost or pricing data is required, the Contracting Officer may also waive the requirement for cost/price analysis by the cost/price analysis element when a sole bid or sole offer is received if recent awards for the item or service have been made on a price competitive basis and such award prices and current market trends clearly indicate that the offered price is reasonable.

(3) If the Contracting Officer elects to waive the requirement for cost/price analysis by the cost/price analysis element under the circumstances specified above, the contract file will be documented with the facts supporting the Contracting Officer's determination.

(4) In addition to the requirements for an analysis by the cost/price analysis element, the Contracting Officer may request assistance from the cost/price analysis element in any other procurement as deemed necessary. On any procurement on which an analysis

is not performed by the cost/price analysis element, a price analysis will be performed in accordance with ASPR 3-807.

§ 1203.807-3 Cost or pricing data.

(a)(1) If an option is priced at the time of award it is subject to the requirements of PL 87-653 at that time and the price of the option must be considered in determining whether the proposed contract is expected to exceed \$100,000 in amount.

(b) Distribution of each exemption authorized shall be effected by HQ DLA. Six copies of each exemption shall be provided HQ DLA, ATTN: DLA-PPP.

§ 1203.807-6 Refusal to provide cost or pricing data.

Prior to referral to HQ DLA, the Commander, or in his absence, the Acting Commander, shall make a determination whether or not to personally negotiate with the contractor involved and attempt to obtain the necessary cost or pricing data. In those cases where it is determined that the Commander should not personally conduct negotiations, a detailed memorandum setting forth the rationale shall be forwarded with the referral to HQ DLA, ATTN: DLA-PC.

§ 1203.807-50 Cost or pricing data for indefinite quantity and requirements type contracts.

ASPR 3-409.2(a) and 3-409.3(a) state that estimated total quantities to be ordered under requirements and indefinite quantity contracts respectively should be as realistic as possible. Accordingly, when cost or pricing data must be obtained under these types of contracts, the quantity of the item or service for which such data is to be obtained is the total quantity as specified in the solicitation. To avoid delay in the receipt of the required cost or pricing data the solicitation should specify the quantitative requirements for which such data shall be submitted.

§ 1203.811 Record of price negotiation.

(a) The Price Negotiation Memorandum (PNM) must be written so as to permit reconstruction of all of the major considerations of the particular procurement. While excessive detail should be avoided, it is this PNM, standing alone, which must convince any and all reviewers of the procurement that the price is fair and reasonable and arrived at properly. Although the content will vary depending on the magnitude of the contract, the contract type, the cost or pricing data obtained, the extent of negotiations, etc., the format should be standard. The PNM should have the following subdivisions: Subject; "Introductory Summary, Particulars, Procurement Situation,

Negotiation Summary, and Miscellaneous." The detailed content of each of these subdivisions is spelled out in ASPM No. 1 (1975 Edition), pages 7B16 through 7B24.

Subpart L—Cost Accounting Standards

§ 1203.1203 Prime contractor disclosure statement(s).

(e) *Determination of Secretary that it is Impractical to Secure Disclosure Statement(s).* Prior to referral to HQ DLA, of a proposed waiver of the requirement for a Disclosure Statement(s), the Commander, or in his absence, the Deputy or Acting Commander, shall personally negotiate with the proposed contractor and attempt to obtain the required statement(s). In those cases where it is determined that the Commander should not personally conduct negotiations, a detailed memorandum setting forth the rationale shall be forwarded with the referral to HQ DLA, ATTN: DLA-PC.

§ 1203.1204 Contract clauses.

(a)(ii) The analysis of the information furnished by the offeror in support of his claim for exemption from the requirements of the Cost Accounting Standards Clause must demonstrate that the criteria of ASPR 3-807.1(b)(2) have been met. The results of such an analysis shall be separately documented in the contract file. In addition, when a determination is made that a catalog or market price exemption applies, the contract file documentation pertaining to the pricing aspects of the procurement (i.e., the price analysis, the prenegotiation briefing memorandum and the PNM) shall indicate that pricing is based on adequate price competition. (See 21-126, Item 18.)

§ 1203.1210 Cost Accounting Standards Board Report.

(a) Comments requested in ASPR 3-1210(c) for each full calendar year shall be provided to HQ DLA, ATTN: DLA-PP, within 40 days following the end of each calendar year. RCS DD-I&L(A)1222 applies.

§ 1203.1211 Waiver of cost accounting standards, rules and regulations.

(a) Prior to referral of a waiver request to HQ DLA, the Commander, or in his absence, the Acting Commander, shall personally negotiate with the contractor involved and attempt to obtain acceptance of the Cost Accounting Standards, Rules and Regulations. The request for waiver should be forwarded by covering letter of the Commander or his Deputy with a statement concerning the above negotiation and recommendations to HQ DLA (ATTN: DLA-PP).

(b) The Cost Accounting Standards Regulation 4 CFR 331.30, subparagraph (c)(1) and (c)(2) (ASPR Appendix O) contains a listing of specific information to be furnished when requesting waivers. Waiver requests should reference these requirements and list, in order, the specific responses to each. The waiver request must cite the date by which a Board decision is needed and the reasons therefor.

(c) The request for waiver should be on plain paper. Five complete sets of the request and its supporting documentation should be furnished.

PART 1204—SPECIAL TYPES AND METHODS OF PROCUREMENT

Subpart C—Contracts with Requirements for Provisional Items

Sec.

- 1204.302 Procurement requirements.
- 1204.302-50 Waiver of provisioning technical requirements.
- 1204.302-51 Contracting officer's representative-provisioning.
- 1204.302-52 Errata sheets.

Subpart H—Paid Advertisements

- 1204.802 Authority and delegation to place advertisements.
- 1204.802-2 Requests for authority to place advertisements.

AUTHORITY: The provisions of this Subchapter A are issued under 5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DOD Directive 5105.22, January 5, 1977.

Subpart C—Contracts With Requirements for Provisional Items

§ 1204.302 Procurement requirements.

§ 1204.302-50 Waiver of provisioning technical requirements.

The following clauses are for use in the acquisition of provisioning technical documentation. The clauses shall be used when Military Standards 1552 and 1561 are cited in solicitations.

(a) Waiver/Reduction of Provisioning Technical Documentation and Supplementary Provisioning Technical Documentation Requirements (DLA 1975 July).

Award for Provisioning Technical Documentation (PTD) Requirements and Supplementary Provisioning Technical Documentation (SPTD) Requirements will be made only to the offeror who receives an award for the applicable end item(s) of equipment.

The Government reserves the right to eliminate or reduce PTD/SPTD requirements for line items in the solicitation if such documentation has been previously furnished by the offeror and accepted by the Government and the Contracting Officer determines that such PTD/SPTD or changes thereto are acceptable for the immediate requirement.

In addition to pricing PTD/SPTD requirements, offerors are requested to provide information as to PTD/SPTD previously submitted to the Department of Defense believed to be appropriate, with or without changes, for this solicitation:

STATEMENT OF PRIOR SUBMISSION

PRIOR GOVERNMENT ACCEPTANCE OF PROVISIONING TECHNICAL DOCUMENTATION/SUPPLEMENTARY PROVISIONING TECHNICAL DOCUMENTATION

Date Previously Submitted, Contract No., Contract Item No.

Equipment Nomenclature, Name/Address of Accepting Activity, Provisioning Specification.

Changes to previously submitted PTD/SPTD (Type III Provisioning in accordance with DLA Addendum to Provisioning Requirements Statement) are those items added, deleted, changed or modified in the end item which must be recorded in the previous provisioning lists to update the list to the configuration of the end item procured as covered by paragraph 5.3.11 of Military Standard 1561.

The offeror hereby certifies that previously submitted (PTD/SPTD) () does () does not require changes. (Check One)

If the PTD/SPTD previously furnished requires changes, indicate a list of the changes required with a price for furnishing the changes: (See example, Note 1 at end of clause.)

PTD element	Number of line item changes	Price ¹
Total		

¹Per type III provisioning PTD element.

If the Government determines that Type III Provisioning will fulfill its needs, eligible offers will be evaluated as to price based on Type III Provisioning and, if low, award will be made for Type III Provisioning. PTD/SPTD changes shall be furnished by the Contractor within 30 days after award, or when first article testing is required within 30 days after first article approval.

PTD/SPTD is as specified in the DD Form 1423 (Contract Data Requirements List) and DD Forms 1949-1, Provisioning Technical Documentation Data Selection Sheet and 1949-2, Provisioning Requirements Statement will be required unless award is made specifically for Type III Provisioning.

NOTE 1.—For example, if previous submission of PTD was Type I in accordance with DLA Addendums to the Provisioning Requirements Statement and several changes are needed to update the various PTD elements for the present equipment configuration, these would be recorded as follows:

PTD element	Number of line item changes	Price ¹
Provisioning parts lists.	10.....	\$xx.xx
Long lead time item list.	2.....	xx.xx
Repairable items list.	1.....	xx.xx
Screening.....	50 part numbers to be screened.	xx.xx
Supplementary provisioning technical documentation.	13 dwgs, sketches, description, etc.	xx.xx
Total.....	13.....	xx.xx

¹For type III provisioning per PTD element.

(b) DO5—Data Pricing, Evaluation and Award.

(1) If the offeror does not indicate a charge for data, the Government will consider and the offeror agrees that the data charge is included in the price of the end item.

(2) The Government reserves the right to waive one or more data CLINs in evaluating each offer and in awarding the contract, as the best interests of the Government may require. Each offer will be evaluated on the basis of only those data CLINs required of that offeror.

(3) Separate awards will not be made for data CLINs.

§ 1204.302-51 Contracting officer's representative-provisioning.

The Chief Provisioning Coordination Office, Directorate of Technical Operations, DSC and additional personnel within this office shall be designated as Contracting Officer's Representative for Provisioning for the purpose of providing technical assistance to offerors/contractors with regard to requirements for equipment support and provisioning for DSC procured end items/components. Delegation of responsibility shall include authority for actions to be taken by the Provisioning Coordination Office as set forth in DLAR 4100.8, "Surveillance of the Contractual Aspects of the Provisioning Cycle in the Defense Supply Centers." For example, the COR for Provisioning is responsible for reviewing PR/MIPR provisioning requirements to insure compliance with provisioning policy and procedures and proper presentation of provisioning requirements in solicitations and contracts, conducting Pre-Provisioning Guidance and Source Coding Conferences when required by the contract, negotiating reductions in provisioning technical documentation requirements including recommendations for equitable adjustments in the contract price or delivery terms based on technical provisioning considerations, surveillance necessary to assure receipt of provisioning technical documentation, and notifying the contractor of required corrections (rejection) or acceptance of provisioning technical documentation. The delegation will not include any authority to modify or change the terms of the contract or to make any agreement which will result in an increase in the contract amount or extend the time for delivery of the end items.

§ 1204.302-52 Errata sheets.

The authorized changes to MIL-STD 1552 and MIL-STD-1561 are listed below.

(a) MIL-STD-1552.

Paragraph 2.1 Delete the reference to the M1 series of Supply Cataloging manuals and replace with reference to DOD 4100.38-M, DOD Provisioning and Other Preprocurement Screening Manual and DOD 4100.39-M, Defense Integrated Data System (DIDS) Procedures Manual.

Paragraph 5.1.5.1.4. In the last five examples of the PLISN on page 7, the change letters (M, D, T, Q, L) should be moved one space to the right to the sixth position of the field.

Paragraph 5.1.5.4.1. Change reference to DOD 4100.38-M (paragraph 1.220.74).

Paragraph 5.1.5.6. Delete reference to M1-4 for Code 3.

Paragraph 5.1.5.6. Do not enter Codes E, F and G. If the item is altered or selected it may be so noted in the remarks block.

Paragraph 5.1.5.7. For Code 1 change to, "Number is formatted in accordance with DOD 4100.38-M, paragraphs 4.100.4 and 4.400 (i.e., DIDS in the clear)."

Paragraph 5.1.5.8. Change Maximum space allocation to read "19" positions.

Paragraph 5.1.5.11. Change the reference to "M1-7" to "Appendix 3-E-2.52 of DOD 4100.39-M."

Paragraph 5.1.5.19. Change "M1-7 Cataloging Handbook" to "Appendix 3-E-2.10 of DOD 4100.39-M DIDS Procedures Manual."

Paragraph 5.1.5.28. Change "Cataloging Manual M1-7" to "Appendix 3-E-2.22 of DOD 4100.39-M."

Paragraph 5.2.4. Delete "as described in the Cataloging Manual M1-6 shall be used" and replace with "will be formatted in accordance with Chapter 2, Section 4, Subsection 10, DOD 4100.39-M or Chapter IV, DOD 4100.38-M."

Page 25, Card ID "E" cc 52-57 Change Data Block Title to read "Replaced or Superseding PLISN."

Paragraph 5.3.4.5.1. Change the word "Superseded" in the paragraph title to read "Replaced". Change the word "superseded" in sub-paragraph (a) to read "replaced". Change the word "Replacing" in sub-paragraph (b) to read "Replaced". Change the word "superseded" in sub-paragraph (c) to read "replaced."

Paragraph 5.3.4.5.2. Change the word "Replacing" in the paragraph title to read "Superseding". Change the words "Replacing/Superseded" in sub-paragraph (b) to read "Replaced/Superseding PLISN." Change the word "replacing" in sub-paragraph (c) to read "superseding."

(b) MIL-STD-156.

Paragraph 5.2.1.1. Change the word "meeting" to "conference."

Paragraph 5.3.3.1. Change the word "screens" to "screws."

Subpart H—Paid Advertisements

§ 1204.802 Authority and delegation to place advertisements.

§ 1204.802-2 Requests for authority to place advertisement.

(b) Requests for authority to place advertisements in newspapers publicizing procurement information shall be submitted, in quadruplicate, through channels, to HQ DLA, ATTN: DLA-PP, for appropriate action.

PART 1205—INTERDEPARTMENTAL AND COORDINATED PROCUREMENT

Subpart A—Procurement under General Supply Schedule Contracts

Sec.

1205.101 Federal supply schedule contracts.

Sec.
1205.101-50 Use of Federal supply schedules.

Subpart D—Procurement From Federal Prison Industries, Inc.

1205.406 Procurement procedure.
1205.406-50 Pricing policies for awards to Federal Prison Industries, Inc.

Subpart F—Procurement of Printing and Related Supplies

1205.601 Printing and related supplies.

Subpart G—Procurement Under the Economy Act

1205.750 Procurement of items from Commodity Stabilization Service (CSS), Department of Agriculture.

Subpart K—Coordinated Procurement

1205.1106 Purchase authorization.
1205.1106-2 Use of advance MIPR's.

Subpart L—Commodity Assignments

1205.1201 Assignment authority.
1205.1201-2 Exclusions—DLA and GSA assignments.
1205.1201-50 Items in the DLA Civil Agency catalog.

AUTHORITY: The provisions of this Subchapter A are issued under 5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DOD Directive 5105.22, January 5, 1977.

Subpart A—Procurement Under General Supply Schedule Contracts

§ 1205.101 Federal Supply Schedule Contracts.

§ 1205.101-50 Use of Federal Supply Schedules.

Items procured by DOD activities from Federal Supply Schedules containing the following contractual provision under the provisions of ASPR Section V, Part I, should, where applicable, cite the priority rating on each delivery order placed under the Federal Supply Schedules.

Priorities, Allocations and Controlled Material:

"If any order is placed against this contract is rated and certified for National Defense, the contractor is required to follow the provisions of DPS Regulation 1 (formerly BDSA Regulation 2) and/or DMS Regulation 1 in obtaining materials needed to fulfill the requirement of this contract."

Subpart D—Procurement from Federal Prison Industries, Inc.

§ 1205.406 Procurement Procedure.

§ 1205.406-50 Pricing Policies for Awards to Federal Prison Industries, Inc. (FPI)

(a)(1) Prices in awards to FPI for the partial or entire quantity of a procurement shall not exceed current market prices.

(2) On procurements involving multiple awards to both commercial contractors and to FPI of a mandatory

item, the current market price will be a price considered by the contracting officer to reflect current market levels but in no event a unit price higher than the highest award price made on the unrestricted portion adjusted for the applicable cost factors designated herein, unless it is determined that the price was the result of a distressed bid, bidder's mistake, or inflated because of Department of Defense requirements. In awards involving multiple destination, each destination, for purposes of determining the price to be paid FPI, shall be considered a separate award. The term "unrestricted" as used in this Part refers to the portion of the procurement not procured from Federal Prison Industries whether or not a small business or labor surplus area set-aside has been made thereon.

(3) When a procurement action involves allotment to FPI of the entire quantity of the required item and current market quotations are not available, prior procurement prices (adjusted to reflect changes in market prices of components since the last procurement and differences in any other cost factors, e.g., labor, operating supplies, employee fringe benefits) shall be used as the basis for determining the current market price.

(4) A quotation from FPI at or less than the determined current market price shall be accepted.

(5) Awards to FPI shall be on an f.o.b. origin basis unless otherwise specified.

(6) Prices for FPI contracts shall be rounded off to the nearest mill.

(b) The cost of transportation of Government-furnished property to both FPI and to commercial contractors shall be excluded. Differences in Government transportation costs of end items to the same destination point under FPI award and under awards to commercial contractors shall be included. Also, variation in the cost of Government-furnished property, based on stated percentages of usage of Government-furnished property allowances shall be included.

(c) Firm delivery orders shall be given to FPI promptly upon determination of the quantity to be awarded FPI. The following procedures are to be utilized in determining prices to be included on these delivery orders:

(1) When a concurrent commercial procurement is being made, the price quoted by FPI shall be cited on the delivery and the statement set forth below shall be included on the order. In the event the current market price determined by the contracting officer under the "unrestricted" procurement is lower than the quoted FPI price, adjustment shall be made to the lower price; provided, however, that in the time elapsed between the delivery order to FPI and the opening date on

the "unrestricted" portion, there has been no significant change in market conditions. Should there have been a significant change in market conditions, the current market price for FPI order will be determined under the provisions of (a)(3) of this section.

(2) When the circumstances described in (a)(3) of this section exist, immediate action shall be taken to determine the current market price. Should that price be lower than the quoted price, prompt contact shall be made by the most expeditious means with the FPI and the circumstances and factors used in the determination explained. Should an agreement not be reached as to the current market price within five consecutive days from the date of contact, the order shall be promptly issued on the basis of the current market price determined by the contracting officer, and the statement provided below shall be included on the delivery order.

(3) After issuance of a delivery order containing the statement set forth below, every effort will be made by the purchasing office to reach an agreement as to the current market price applicable to the order. Agreements reached shall be confirmed by a revision to the delivery order stating the price applicable to the order and deleting the below statement.

(4) Efforts to obtain agreement, to include exchange of data on which the current market price was based, may continue up to the time of inspection and acceptance of the first delivery for payment. If agreement should not be reached by that time, the case shall be submitted to HQ DLA, ATTN: DLA-P, as unresolvable and shall contain a detailed explanation of the factors determining the current market price which was not acceptable to the FPI.

The statement to be included on the delivery order to FPI pending determination of current market price is as follows:

The price in this contract is subject to later adjustment between the Commissioner of the Federal Prison Industries, Inc., and the Executive Director, Procurement, HQ DLA, and the arbitration provisions of Section 4124 of Title 18, United States Code, shall not be invoked except in the case of a disagreement on the part of the Commissioner of the Federal Prison Industries, Inc., and the Executive Director, Procurement, HQ DLA. (1962 JUL.)

Subpart F—Procurement of Printing and Related Supplies

§ 1205.601 Printing and related supplies.

Policy and procedures for the procurement or production of printing are contained in DLAR 5330.1—Procurement or Production of Printing.

Subpart G—Procurement Under the Economy Act

§ 1205.750 Procurement of items from Commodity Stabilization Service (CSS), Department of Agriculture.

(a) The CSS shall be contacted concerning the supply of at least carlot requirements of items listed in the Commodity Credit Corporation (CCC) monthly inventories in order to obtain an f.o.b. destination offer from CCC.

Office, Deputy Administrator, Price Support, Commodity Stabilization Service, Room 350W—Administration Building, Department of Agriculture, Washington, D.C. 20025.

- (b) Requests for offers shall state:
- (1) Commodity and quantity desired;
 - (2) Applicable specification;
 - (3) Packaging and packing requirements;
 - (4) Required delivery dates;
 - (5) Grade and crop year; and
 - (6) Destination.

In all communications with CSS/CCC relative to proposed procurements, advice shall be furnished that the procurement information is not to be disclosed to unauthorized sources.

(c) If the Department of Agriculture advises that no quotation will be submitted or that they are unable to meet specifications requirements, the procurement will be placed with commercial sources in the usual manner.

(d) If a quotation is received from the Department of Agriculture, and the commodity meets the specifications and requirements, a comparative price analysis shall be made to determine whether the price quoted exceeds current market prices from commercial sources. The comparative analysis shall take into consideration applicable adjustments for crop or pack year, packing, shipping, and handling charges.

(e) If the analysis indicates that the price quoted exceeds current market price, CCC shall be advised with a view to obtaining a price not in excess of current market price.

(f) If the CCC price is equal to or lower than the current market price, the order shall be placed with CCC.

(g) If it is determined that procurement will be made commercially because of price or specification consideration, the CCC shall be so advised.

(h) If it is determined that offers from commercial sources will result in a higher cost than acceptance of the CCC offer, negotiations shall be reopened with CCC.

(i) Inspection of items procured from CSS shall be made in conformance with established inspection procedures.

(j) The following shall apply to all procurements of bagged commodities from CSS:

An official weighmaster's certificate based on origin weights shall accompany each

shipment and a copy shall be attached to the CCC invoice. CCC invoice shall be for the number of pounds shown on the official weighmaster's certificate. Quantity receipted for by receiving officer at destination shall be the same quantity less damage in transit, except where a different quantity is actually received. In either event receiving officer will prepare SF 361 or SF 363, as applicable, and attach to receiving report submitted to paying office. Over or short shipment adjustment to be requested in instances where number of bags unloaded differs from number shown on documents accompanying shipment in which case receiving officer shall accompany report with bag tally, or with an official weighmaster's certificate in instances where origin and destination bag counts are identical but quantity receipted for is different from quantity shipped. Paying office upon receipt will forward Over, Shortage and Damaged Report (OS&D), accompanied with bag tally or weighmaster's certificate, if applicable to CCC office and request invoice adjustment.

Subpart K—Coordinated Procurement

§ 1205.1106 Purchase authorization.

§ 1205.1106-2 Use of advance MIPRs.

(f) Under the provisions of ASPR 5-1106.2 the following actions may be taken by a DSC upon receipt of an Advance MIPR (or similar type purchase request) provided the purchase request contains a statement reading essentially as follows: "A firm requirement exists for the item(s) contained in this MIPR; purchase of the items will be supported by the commitment of funds which are expected to be made available (within the next ——— days)/(prior to the end of this fiscal year)." Any other written advice from the Requiring Activity that the requirement is firm and that there is a reasonable expectation that funds will be made available for obligation purposes against the specific advance MIPR, may be accepted in lieu of a statement embodied in the MIPR. This advice will be used as the basis to proceed with the purchase action up to and including receipt of responses to an IFB or RFP.

(1) IFB's or RFP's issued on the basis of unfunded Advance MIPRs shall clearly state that no awards will be made until such time as funds become available for obligation purposes. (See ASPR/DLPR 1-318.) The solicitation will also state that the offers shall not be opened until such time as funds have been made available for obligation purposes.

(2) In instances such as those authorized herein, the requiring activity will be notified of the scheduled opening date of the IFB (or closing date of the RFP) and that if funds are not made available by those dates that the solicitation may be cancelled. The scheduled opening or closing date may be extended at the discretion of the procuring activity.

(3) If a requiring activity indicates that funds will not be forthcoming,

the solicitation will be cancelled. All offerors will be notified immediately of such cancellation and their unopened offers will be returned to them.

Subpart L—Commodity Assignments

§ 1205.1201 Assignment authority.

§ 1205.1201-2 Exclusions—DLA and GSA assignments.

(c) *Exclusions to Defense Logistics Agency or General Services Administration Assignments by Agreement.* All proposed agreements in accordance with paragraph VII A5 of DOD Instruction 4115.1, DOD Coordinated Procurement program—Purchase Assignments to permit a Military Service to procure Military Service managed items for which the estimated obligation of a one-time authorization will exceed \$100,000.00 or when the annual obligations are expected to exceed \$100,000.00 for a continuing authorization shall be submitted for review and approval by HQ DLA ATTN: DLA-PP, prior to consummation of the agreement. Continuing authorizations will not be granted for periods exceeding twelve months notwithstanding the amount of estimated annual obligations. Requests will be submitted in triplicate (letter form) in sufficient detail to support the proposed agreement and will be signed at a level no lower than the Executive Director, Procurement, or his Deputy.

§ 1205.1201-50 Items in the DLA Civil Agency catalog.

After stock of a nonstandard item is exhausted and where DOD standardization action provides for a replacement item, the civilian agencies will be encouraged to use the replacement item by the applicable DLA Center. When the replacement item is not acceptable to a civil agency as evidenced by the requisition advice code, or when there is no replacement item, procurement of the DOD nonstandard item is authorized to meet the civil agency requirement.

PART 1206—FOREIGN PURCHASES

Subpart A—Buy American Act—Supply and Service Contracts

Sec.

- 1206.103 Exceptions.
- 1206.103-2 Nonavailability in the United States.
- 1206.103-5 Canadian Supplies.
- 1206.103-50 Shipping Instructions to Canadian Vendors.
- 1206.104 Procedures.
- 1206.104-50 Procedure for Submission to Executive Director, Procurement, DLA.
- 1206.104-51 Contract Clause.

Subpart C—Appropriation Act Restrictions

- 1206.303 Exceptions.
- 1206.304 Procedures.

Sec.

1206.304-1 Procurement of Food, Clothing, Woven Silk and Woven Silk Blends, Spun Silk Yarn for Cartridge Cloth, Synthetic Fabric, or Coated Synthetic Fabric, or Items Containing Mohair or Cotton or Specialty Metals.

Subpart D—Purchases from Rhodesia and Certain Communist Areas

1206.403 Exceptions.

Subpart F—Duty and Customs

1206.603 Emergency Purchases of War Materials Abroad.

1206.603-4 Customs Entries and Duty-Free Certificates.

1206.603-5 Immediate Release Permits.

1206.604 Supplies for Vessels or Aircraft Operated by the United States.

Subpart G—Military Assistance Program Procurements

1206.703-50 Use of Domestic Sources for MAP Procurements.

1206.703-51 Exceptions.

Subpart H—Balance of Payments Program

1206.805 Supply and Service Contracts.

1206.805-2 Procurement Limitations.

Subpart I—International Agreements and Coordination

1206.902 International Agreements.

1206.902-50 Procurement Services for the FRG.

Subpart M—Procurements for Foreign Military Sales

1206.1303 Preparation of DoD Offer and Acceptance.

1206.1303-1 Procedures.

1206.1303-50 FMS Shipping Instructions.

1206.1310 Implementation of Offset Arrangements Included in Foreign Military Sales Agreements.

1206.1310-2 General.

1206.1310-3 Procedures.

AUTHORITY: The provisions of this Subchapter A are issued under 5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DoD Directive 5105.22, January 5, 1977.

Subpart A—Buy American Act—Supply and Service Contracts

§ 1206.103 Exceptions.

§ 1206.103-2 Nonavailability in the United States.

(a) The required determination shall be prepared in substantially the following form:

DETERMINATION

DATE ———.

Pursuant to the authority contained in Section 2, Title III of the Act of March 1933, commonly called the Buy American Act (41 U.S. Code 10 a-d), and authority delegated to me by paragraph 6-103.2 of the Armed Services Procurement Regulation, I hereby find:

a. (Description of the item or items to be procured, including unit, quantity, and estimated cost inclusive of duty and transportation costs to destination).

b. (Brief statement of the necessity for the procurement).

c. (Statement of facts establishing the nonavailability of a similar item or items of domestic origin).

Based upon the above showing of fact, it is determined that the above described item(s) is(are) not mined, produced, or manufactured, or the articles, materials, or supplies from which it(they) is(are) manufactured, are not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

Accordingly, the requirement of the Buy American Act that procurement be made from domestic sources and that it be of do-

mestic origin is not applicable to the above described procurement, since said procurement is within the nonavailability exception stated in the Act. Authority is granted to procure the above item(s) of foreign origin (Country of origin) at an estimated cost of \$ ——— including duty and transportation costs to destination.

Signature

(b) A copy of the validation of the procurement requirement in accordance with DLAM 4140.3 shall be made a part of the contract file.

(c) Where approval of the determination of nonavailability is required at a level above the HPA, a copy of the validation of the procurement requirement shall be included with the request for approval.

(d) When the restrictions of the Buy American Act are determined to be inapplicable to the end products, the contractor shall be notified of that determination by such means as an appropriate notation in the body of the contract.

(e) For purposes of determining the approval level necessary in ASPR 6-103.2(b), option totals shall not be added to basic award amounts. Prior to exercising the option, however, a new determination of nonavailability (for the option total only) shall be made.

§ 1206.103-5 Canadian supplies.

The Director DLA, has determined that the following supplies are of a military character or are involved in programs of mutual interest to the United States and Canada. Notwithstanding the listing of a Federal Supply Class below, all provisions and restrictions of the Annual DoD Appropriation Act (ASPR 6-300) are applicable.

FSC group	Descriptions	FSC classes
22.....	Railway equipment.....	2230.
24.....	Tractors.....	2410, 2420.
25.....	Vehicular equipment components.....	2510, 2520, 2530, 2540, 2590.
28.....	Engines, turbines, and components.....	2805, 2815, 2895.
29.....	Engine accessories.....	2910, 2920, 2930, 2940, 2990.
30.....	Mechanical power transmission equipment.....	3010, 3020, 3030, 3040.
31.....	Bearings.....	3110, 3120, 3130.
34.....	Metalworking machinery.....	All classes.
35.....	Service and trade equipment.....	3520.
36.....	Special industry machinery.....	All classes.
38.....	Construction, mining, excavating, highway maintenance equipment.....	3805, 3810, 3815, 3820, 3825, 3830, 3835, 3895.
39.....	Materials handling equipment.....	All classes.
40.....	Rope, cable, chain, and fittings.....	4010, 4020, 4030.
41.....	Refrigeration and air conditioning and air circulatory equipment.....	4110, 4120, 4130, 4140.
42.....	Firefighting, rescue, and safety equipment.....	4210, 4220, 4240.
43.....	Pumps and compressors.....	4310, 4320, 4330.
45.....	Plumbing, heating, and sanitation equipment.....	4510, 4520, 4530, 4540.
46.....	Water purification and sewage treatment equipment.....	4610, 4620, 4630.
47.....	Pipe, tubing, hose, and fittings.....	4710, 4720, 4730.
48.....	Valves.....	4810, 4820.
49.....	Maintenance and repair shop equipment.....	4930.
52.....	Measuring tools.....	5280.
53.....	Hardware and abrasives.....	All classes except 5345 and 5350.
54.....	Prefabricated structures and scaffolding.....	5410, 5420, 5430, 5440, 5445, 5450.
55.....	Lumber, millwork, plywood, and veneer.....	5510, 5520, 5530.
56.....	Construction and building materials.....	All classes except 5630, 5640, and 5650.
58.....	Communication, detection, and coherent radiation equipment.....	All classes.
59.....	Electrical and electronic equipment.....	Do.
61.....	Electric wire and power distribution equipment.....	6105, 6110, 6115, 6125, 6130, 6120, 6145, 6140, 6150.
62.....	Lighting fixtures and lamps.....	6210, 6220, 6230, 6240, 6250, 6260.
63.....	Alarm and signal systems.....	6350.
65.....	Medical, dental, and veterinary equipment and supplies.....	6505, 6515, 6520.

FSC group	Descriptions	FSC classes
66	Instruments and laboratory equipment.....	6630, 6640, 6635, 6655, 6670, 6645, 6660, 6675, 6680, 6685, 6695.
67	Photographic equipment.....	All classes.
68	Chemicals and chemical products.....	6810, 6820, 6830, 6840, 6850.
70	General purpose automatic data processing equipment, software, supplies, and support equipment.....	All classes.
72	Household and commercial furnishings and appliances.....	7240 (cans, water, military only).
75	Stationery and record forms.....	7530.
76	Books, maps, and other publications.....	7610.
81	Containers, packaging, and packing supplies.....	8105, 8110, 8120, 8115, 8125.
83	Textiles, leather, furs, apparel and shoe findings, tents and flags.....	8340 (to the extent restrictions of DOD Appropriation Act are not applicable).
84	Clothing and individual equipment and insignia.....	8405 (beret, man's, wool only); 8415 (steel helmets only); 8465 as indicated: (1) snowshoes, trail, metal; (2) canteen, water, plastic; (3) cup, water canteen, steel; (4) frame, field pack, without straps; and (5) shelf, cargo support; 8470.
93	Nonmetallic fabricated materials.....	9320, 9330, 9340, 9350, 9390, 9310 (MAP paper only).
95	Metal bars, sheets, and shapes.....	All classes.
96	Ores, minerals, and their primary products.....	9620.

Parts for the above listed supplies are considered to be included in the list, even though not separately listed, when they are produced under a contract that also calls for listed supplies.

§ 1206.103-50 Shipping instructions to Canadian vendors.

Shipping instructions provided Canadian vendors furnishing DOD supplies shall designate a CONUS destination or Canadian port marked for a CONUS destination. No Canadian vendor is to be requested to make shipments of DOD supplies addressed to an overseas destination. On urgent requirements for shipment to overseas destinations, the shipping instructions shall be forwarded to the Defense Contract Administration Office, 6th Floor, Canadian Building, 219 Laurier Avenue, West, Ottawa, Ontario, Canada (K1A055), who will make necessary arrangements.

§ 1206.104 Procedures.

§ 1206.104-50 Procedure for submission to Executive Director, Procurement, DLA.

Proposed Awards not within the approval authority of the Head of the Procuring Activity shall be submitted to HQ DLA, ATTN: DLA-PP, for approval with a recommendation supported by relevant facts, including the amount of applicable duty as verified by the U.S. Customs Service, and the information required to be furnished by § 1201-452.3. The requirement shall be carefully screened against Department of Defense excess and surplus materials before submission. The results of this screening shall be reported in the statement of facts. Appropriate

provision shall be made for extending the date of acceptance of bids, offers, or proposals to permit sufficient time for orderly transmission and consideration.

§ 1206.104-51 Contract clause.

The following clause may be used in formally advertised or negotiated procurements when it is anticipated that offers on items of foreign origin will be received.

EVALUATION OF OFFERS ON ITEMS OF FOREIGN ORIGIN (DLA 1970 DEC)

a. Offerors offering other than domestic source end products, as defined in ASPR 7-104.3 Buy American Act, must include in the price offered all applicable import duty and, for evaluation purposes, furnish the following for each item:

Item No. _____
Amount of Duty per Unit _____

b. If this solicitation is formally advertised (an IFB), failure of an offeror to furnish the data required above will result in the rejection of his offer when such failure results in the Government's inability to evaluate the offer.

c. The Government reserves the right to award on a duty-free basis by reducing the unit price offered by the amount of the duty. If award on a duty free basis is made, the clause set forth in ASPR 7-104.31(a) Duty-Free Entry for Certain Specified Items, is incorporated herein by reference and made a part thereof.

Subpart C—Appropriation Act Restrictions

§ 1206.303 Exceptions.

(x) As provided for in Section 6-303(x) of the Armed Services Procurement Regulation, the Heads of DLA Procuring Activities are delegated,

without the power of redelegation, authority to make determinations, where appropriate that the restrictions of Section 6-302 do not apply to purchases of specialty metals when a satisfactory quality and sufficient quantity melted in the United States or its possessions cannot be procured as and when needed at United States market prices.

§ 1206.304 Procedures.

§ 1206.304-1 Procurement of food, clothing, woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric, or coated synthetic fabric, or items containing mohair or cotton or specialty metals.

Where prices for domestic supplies are considered unreasonable within the purview of ASPR 6-304.1 the contracting officer shall forward a request for determination, through channels, to HQ DLA, ATTN: DLA-PP. Each such request, in addition to complete information on all factors pertinent to the requested action, shall contain a proposed determination. The format of the determination in § 1206.103-2(a) may be used as a guide.

Subpart D—Purchases From Rhodesia and Certain Communist Areas

§ 1206.403 Exceptions.

(a) Determinations may be made by contracting officers under ASPR 6-403(a) for purchases not exceeding \$2,500; and such determination shall be reduced to writing and made a part of the appropriate contract file.

(b) Requests for the approval required by ASPR 6-402(a) for pur-

chases exceeding \$2,500, shall be forwarded to HQ DLA, ATTN: DLA-PP, and shall contain full justification, with all pertinent details, for effecting the proposed procurement from a source within a communist-controlled area.

Subpart F—Duty and Customs

§ 1206.603 Emergency purchases of war materials abroad.

§ 1206.603-4 Customs entries and duty-free certificates.

The HPA is hereby delegated, with the power to redelegate, the authority to execute duty-free entry certificate in the form set forth in ASPR 6-603.4 for emergency purchases of war materials, as defined in ASPR 6-603.1.

§ 1206.603-5 Immediate Release Permits.

The HPA is hereby delegated, with the power to redelegate, the authority to issue "Immediate Release Permits" as prescribed in ASPR 6-603.5.

§ 1206.604 Supplies for Vessels or Aircraft Operated by the United States.

(b) Authority is delegated to the Commander, Defense Fuel Supply Center, with the power of re delegation to execute duty-free entry certificates in the form set forth in ASPR 6-604(b) for the classification of supplies in ASPR 6-604(a).

Subpart G—Military Assistance Program Procurements

§ 1206.703-50 Use of domestic sources for MAP procurements.

MAP requirements will be procured in accordance with ASPR Section VI, Part 7 and DOD Directive 2125.1, Military Assistance Program Offshore Procurement (MAP.OSP), dated 18 June 1970. DOD Directive 2125.1 sets forth policies and procedures for procurement of Defense articles and Defense services from suppliers delivering from sources located outside the U.S., its possessions and Puerto Rico for the Military Assistance Program. The DOD Directive requires that MAP procurements be restricted to domestic sources unless, for purchases of \$10,000 or less, such action is clearly undesirable, or for MAP purchase in excess of \$10,000, the cost of domestic source end products, or services of domestic concerns located in the United States, is estimated to be more than 50% in excess of the cost from foreign sources. Prior to the solicitation of MAP requirements, procuring contracting officers shall consider the criteria of Section IV, paragraph B.4, of DOD Directive 2125.1. In all cases where the preliminary judgment is that the procurements should not be restricted to domestic end sources, the proposed procurements shall be referred to the Executive Director, Procurement, HQ DLA, ATTN: DLA-PP.

§ 1206.703-51 Exceptions.

(a) In any case where a procurement has been restricted to domestic source end products and a foreign offer is, nonetheless, received which meets the criteria in Section IV, paragraph B.4 of DOD Directive 2125.1, the procurement will be referred to the Executive Director, Procurement, HQ DLA, ATTN: DLA-PP.

(b) Notwithstanding the above, DPSC is referred to the restriction in Section 606(c) of the Foreign Assistance Act of 1961, as amended, against the procurement of patented drugs from foreign sources when MAP funds are used.

Subpart H—Balance of Payments Program

§ 1206.805 Supply and service contracts.

§ 1206.805-2 Procurement limitations.

(b) For procurements estimated not to exceed \$100,000, the authority in ASPR 6-805.2(b)(1) is redelegated to HPAs within DLA. This authority may be delegated to the principal staff officer responsible for procurement within the Procuring Activity. DGSC is authorized to redelegate this authority to purchase foreign books and publications not to exceed \$10,000 to the contracting officer concerned.

(e) The documentation referred to in ASPR 6-805.2(e) shall be prepared in the form of a Determination and Findings and shall be forwarded to the Executive Director, Procurement, HQ DLA, Attn: DLA-PP. When the procurement is justified under ASPR 6-805.2(a)(v), the Determination and Findings shall include a statement of facts establishing nonavailability and an indication of the consideration given to foregoing the requirement or providing a domestic made substitute. The following specific information shall be furnished in letter transmitting the Determination and Findings:

- (1) Stock number;
- (2) Item nomenclature;
- (3) Description (to include pertinent specification citations);
- (4) Backorder situation;
- (5) Average monthly demand;
- (6) Due-in quantities by date;
- (7) Average price paid during the previous year;
- (8) Latest procured quantity and price;
- (9) Quantity and delivery schedule recommended for offshore procurement (OSP);
- (10) Fund availability;
- (11) Offshore source, if known; and
- (12) Any other pertinent data for justifying the proposed procurement.

Subpart I—International Agreements and Coordination

§ 1206.902 International agreements.

§ 1206.902-50 Procurement services for the FRG.

(a) *General.* Based on principles expressed in the Mutual Defense Agreement between the USA and the Federal Republic of Germany (FRG) of 8 October 1976 (TIAS 3660) and its subsequent amendments of 24 October 1960 (TIAS 4599) and 24 November 1961 (TIAS 4903), the U.S. Government has agreed to sell to the FRG certain military equipment, materials and services pursuant to Sec. 106 of the Mutual Security Act of 1954 as amended. The 1961 amendment broadened the Agreement to provide U.S. Government procurement for the FRG of items not previously procured. These procurement services include sale to or purchase for the FRG of certain articles and services which are not standard military items but which are directly related to or essential for the operational capability of the Armed Forces of the FRG.

(b) *Definitions.*

(1) *Nonstandard Items.* The Military Services will make the determination of whether an item is nonstandard. However, in cases where the determination has not been made and where the item has not previously been purchased as a standard item, the determination of whether the item is standard or nonstandard will be made by Plans and Operations Branch, Procurement Division, Directorate of Procurement, HQ DLA, (DLA-PPP).

(2) *Procurement Services.* The purchase, inspection, processing, financing, and delivery of nonstandard items to the FRG.

(c) *Policies.* The furnishing of procurement services for nonstandard military items will be provided the FRG by DSCs according to the following policies.

(1) Contract clauses and procedures will be in accordance with the Armed Services Procurement Regulation (ASPR). In no event will contracts be awarded at other than prices which are determined to be reasonable.

(2) Items not covered by U.S. Government specifications will be procured according to manufacturers' specifications and warranties, unless the FRG requests other specifications, qualifications, and warranties. If the specifications and warranties of the manufacturer are considered inadequate for procurement purposes, such specifications and warranties may be adequately supplemented by the U.S. Government after consultation with FRG.

(d) *Responsibilities.*

(1) The DSCs will render prompt procurement services to the FRG for

nonstandard items essential for the operational capability of the Armed Forces of the FRG.

(2) The questions or problems that cannot be resolved will be referred to HQ DLA, Attn: DLA-PPP.

Subpart M—Procurements for Foreign Military Sales

§ 1206.1303 Preparation of DOD offer and acceptance (DD Form 1513).

§ 1206.1303-1 Procedures.

(a) When new procurement over \$10,000 is contemplated, requests from a Military Service International Logistics Control Office (ILCO, the activity normally responsible for submitting the DOD Offer and Acceptance, DD Form 1513, to a foreign country), for Price and Availability data, will be referred to the Directorate of Procurement and Production in each Center. The Directorate of Procurement and Production will obtain information relating to price and production lead-time; identify and review sales commissions and fees which may be involved; and identify any unusual contractual requirements or provisions which may impact on the procurement. This information shall be forwarded to the Supply Office which, in turn, will respond to the ILCO request.

(b) The Directorate of Procurement and Production in each Center will furnish whatever assistance it can reasonably give in identifying known or potential U.S. commercial suppliers for particular items being sought by foreign government authorities when the inquiry is received from an ILCO. In addition, such assistance shall be given directly to government authorities of Latin American countries.

§ 1206.1303-50 FMS shipping instructions.

(a) To reduce misdirected shipments of FMS materiel, no shipping addresses will be placed on FMS orders or contracts. Instead, a notice shall be placed in the order requiring the contractor to contact the transportation officer at the contract administration office for shipping instructions. A clause substantially as follows shall be used:

FMS Shipping Instructions (DLA 1977 Jul). Contractor will contact the transportation officer at the cognizant contract administration office for shipping instructions prior to shipment.

(b) A shipping address may be placed in FMS orders or contracts if complete shipment is anticipated within 120 days of award.

(c) Contracts or orders contemplating the use of the defense transportation system rather than a freight forwarder may include a firm shipping address.

(d) Additional contract provisions may be appropriate for requisitions which contain a "Z" or "Y" card column 46 to satisfy unique requirements of these requisitions. The clauses currently being used by DSCs for these requisitions may continue to be used. However, care should be taken to assure that freight forwarder or embassy addresses are not listed on the order/contract.

§ 1206.1310 Implementation of offset arrangements included in foreign military sales agreements.

§ 1206.1310-2 *General.* The U.S. Government has entered into general offset agreements with the Governments of Norway, the United Kingdom, Switzerland and Australia which in general attempt to ensure that, to the maximum extent possible, purchases by these countries of major weapons systems and associated defense equipment from U.S. sources are offset by purchases of items produced in these countries.

§ 1206.1310-3 Procedures.

(a) Offset procurements will be conducted in accordance with ASPR and normal procurement procedures. Eligible foreign sources will be provided the same technical information and help that is normally provided U.S. sources, insofar as this assistance is consistent with National Disclosure Policy and U.S. Industrial Security Regulations. Their names will be placed on the appropriate Bidders Mailing Lists in accordance with the procedures in ASPR 2-205.7. The normal criteria for making small business and labor surplus area set-asides are to be utilized without regard to the fact that there are potential foreign sources for the items. Procurements from foreign sources will not be made where prohibited by law (e.g., the DoD Appropriation Act).

(b) Solicitations on which a response is anticipated from a foreign source under an offset program should contain a Notice of Potential Foreign Source Competition and a Duty-Free Entry clause. The Notice of Potential Foreign Source Competition clause in ASPR 7-2003.75 may be used except that solicitations anticipating a response from a UK source should contain the clause in § 1206.1310-3(d)(2).

(c) As soon as it is determined that a bid or proposal involving a foreign product from one of the countries identified in DLPR 6-1310.2, other than the United Kingdom, would be accepted but for the Buy American or Balance of Payments Program evaluation factors prescribed by ASPR 6-104.4, the contracting officer shall prepare a statement of the facts surrounding the procurement in suffi-

cient detail to permit judgement as to whether an exception from the Buy American or Balance of Payments restrictions should be authorized. The statement shall be referred to HQ DLA, Attn: DLA-PPR, for appropriate action. Procedures for UK bids or proposals are provided in (d) below.

(d) The Secretary of Defense has executed a Determination and Findings authorizing waiver of the Buy American Act differentials (ASPR 6-104.4) for United Kingdom items. In addition, the Secretary has stated that the Balance of Payments price differentials (ASPR 6-104.4) are inapplicable to UK items. Thus, bids or proposals from UK firms which would be accepted but for the Buy American or Balance of Payments Program will normally be awarded to the UK firm. No further approval of the exception to the Buy American Act is required.

(1) *Exceptions.* There are three exceptions to the above policy.

(i) Restrictions other than the Buy American Act, such as the DOD Appropriation Act, continue to apply to UK items.

(ii) Restricted items set forth in ASPR 1-2207 are excepted.

(iii) Items for which contracts are negotiated pursuant to the authority of ASPR 3-216 are excepted.

(2) *Solicitation provisions.* Solicitations which anticipate competition from UK sources will contain the notice below in lieu of or in addition to the clause set forth in ASPR 7-2003.75:

NOTICE OF POTENTIAL FOREIGN SOURCE COMPETITION

Bids or proposals for this procurement are being solicited from sources in the United Kingdom of Great Britain and Northern Ireland (UK). It has been determined by the Secretary of Defense that the restrictions of section 2 of title III of the Act of March 3, 1933 (47 Stat. 1520; 41 U.S.C. 10a; Buy American Act) shall not apply to items of Defense equipment described in this solicitation when produced or manufactured by UK sources.

(3) *Rejection of acceptable UK bids or proposals.* Otherwise acceptable UK bids or proposals may be rejected when the head of a Defense Agency considers it necessary for reasons of the national interest. Requests for a decision to reject UK offers on this basis should be sent to HQ DLA, Attn: DLA-PPR.

(e) To ensure that these programs are effective, each DSC will designate a contact point who shall be responsible for monitoring the programs. These contact points must be conversant with the policy of selective competitive procurement from foreign sources in the event that they are contacted by foreign officials or prospective foreign contractors. In addition, each contact point shall be prepared to advise DLA-PPP of the current

status of the programs and furnish reports as required.

(f) When an Australian source is solicited, two copies of the complete bid/proposal package (including the necessary specifications and/or drawings) should be sent to:

Chief, U.S. DOD Procurement Information Office, c/o Department of Supply, Constitution Avenue, Canberra, Australia 2600.

PART 1207—CONTRACT CLAUSES AND SOLICITATION PROVISIONS

Subpart A—Fixed-Price Supply Contracts

Sec.

- 1207.103 Required clauses.
- 1207.103-8 Assignment of claims.
- 1207.103-12 Disputes.

Subpart H—Letter Contracts

- 1207.850 Letter Contract for DLA Industrial Readiness Planning Program.
- 1207.850-1 Format.

AUTHORITY: The provisions of this Subchapter A are issued under 5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DOD Directive 5105.22, January 5, 1977.

Subpart A—Clauses for Fixed-Price Supply Contracts

§ 1207.103 Required clauses.

§ 1207.103-8 Assignment of claims.

In cases where special circumstances make it advisable in the best interest of the Government, HPAs may authorize deletion of the last sentence of paragraph (a) of the Assignment of Claims clause set forth in ASPR 7-103.8.

§ 1207.103-12 Disputes.

(c) The Disputes clauses contained in ASPR 7-103.12 shall not be modified to provide for an intermediate appeal board.

Subpart H—Letter Contracts

- § 1207.850 Letter contract for DSA Industrial Preparedness Planning Program.

§ 1207.850-1 Format.

CONTRACT NO. _____

Gentlemen:

This Letter Contract, upon acceptance by your firm will constitute a contract on the terms and conditions stated herein and signifies the intention of the Defense Logistics Agency to enter into a firm fixed-price contract with you for the deliveries of the supplies and performance of the services listed on DD Form 1519 which was executed on _____ in furtherance of the Industrial Preparedness Program.

Schedule of Supplies or Services

The supplies and services to be furnished and the time and place of delivery are as follows:

Contract For _____

Specification Number _____

Appropriation and other Administrative Data _____

The supplies and services to be obtained under this Letter Contract are chargeable to the following allotments, the available balances of which are sufficient to cover the cost of same _____.

F.O.B. _____

Execution, Commencement of Work and Priority Rating _____

The Contractor's acceptance of this order will be indicated by affixing its signature to three copies thereof and returning the executed copies to the Contracting Officer not later than _____. Upon acceptance by both parties, the Contractor shall proceed with performance of the work described herein, including procurement of necessary materials. An appropriate priority rating, in accordance with the Department of Defense Priority and Allocation Manual, will be assigned to this Letter Contract. (ASPR 7-802.2).

Priority Rating

DO or DX _____ (appropriate program code symbol) Certified for national defense use under Defense Materials System Regulation 1.

DEFINITIZATION

(a) A firm fixed-price type definitive contract is contemplated. To accomplish this result, the Contractor agrees to enter into negotiation promptly with the Contracting Officer over the terms of a definitive contract, which will include all clauses required by the Armed Services Procurement Regulation on the date of execution of the letter contract, all clauses required by law on the date of the execution of the definitive contract and such other clauses, terms, and conditions as may be mutually agreeable. The Contractor agrees to submit a fixed-price proposal (cost and fee proposal), and cost or pricing data supporting that quotation.

(b) The schedule for definitization of this contract is set forth below:

Target Date for Definitization: _____

(c) If agreement on a definitive contract to supersede this letter contract is not reached by the target date set forth in (b) above or any extension thereof by the Contracting Officer, the Contracting Officer may, with the approval of the Head of the Procuring Activity, determine a reasonable price or fee in accordance with ASPR Section III, Part 8, and Section XV, subject to appeal by the Contractor as provided in the "Disputes" clause of this contract. In any event, the Contractor shall proceed with completion of the contract, subject only to the "Limitation of Government Liability"

clause. After the date of the Contracting Officer's determination of price or fee, the contract shall be governed by:

(1) all clauses required by the Armed Services Procurement Regulation on the date of execution of this letter contract for either a fixed price type contract or a cost reimbursement type contract as determined by the Contracting Officer under this paragraph (c);

(2) all clauses required by law as of the date of the Contracting Officer's determination; and

(3) such other clauses, terms and conditions as may be mutually agreed upon.

To the extent consistent with the foregoing, all clauses, terms and conditions included in this letter contract except which by their nature are applicable only to a letter contract shall continue to be effective.

Limitation of Government Liability

(a) The Contractor is not authorized to make expenditures or to incur obligations, in performance of this contract, which exceed _____ dollars (\$ _____).

(b) The maximum amount for which the Government shall be liable if this contract is terminated is _____ dollars (\$ _____).

(c) Unless otherwise provided herein no progress payment to the Contractor will be made under this contract.

The enclosed forms, with the exception of Enclosure(s) _____ and clause(s) _____ are hereby incorporated into this letter contract which is entered into pursuant to 10 U.S.C. 2304(a)(1) and any required determination and findings have been made.

Sincerely yours,

Enclosures.

Accepted _____

(Contractor)

Contracting Officer

By _____

(Name—Official Title)

PART 1208—TERMINATION OF CONTRACTS

Subpart B—General Principles

Sec.

- 1208.201 Authority of Contracting Officers.

Subpart F—Termination for Default

- 1208.601 General.
- 1208.602 Termination of Fixed-Price Supply Contracts for Default.
- 1208.602-3 Procedure for Default.

AUTHORITY: The provisions of this Subchapter A are issued under 5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DOD Directive 5105.22, January 5, 1977.

Subpart B—General Principles

- § 1208.201 Authority of contracting officers.

(a) The Head of the Procuring Activity shall prescribe procedures under

which contracting officers may terminate contracts for the convenience of the Government and in the case of cost-reimbursement type contracts for the default of the contractor. Notwithstanding a change in requirements a contract is not to be terminated for convenience (except at no cost to the Government as provided in ASPR 8-602.4(iii)) if the contractor is in unexcusable default and the Government has a legal right to terminate such contract for default.

(b) The settlement of contracts terminated for the convenience of the Government is the responsibility of the cognizant Defense Contract Administration Office (DCAS). A contract may be terminated for the convenience of the Government by the procuring contracting officer (PCO) at no cost to the Government and without referral to DCAS or the issuance of a notice of termination when the PCO is aware that (1) the contractor will accept a no-cost settlement, (2) Government property was not furnished, and (3) there are no outstanding payments, claims or other contractor obligations. In all other cases a notice of termination for the convenience of the Government shall be issued and a copy forwarded to DCAS for action as specified in ASPR 8-203(b).

Subpart F—Termination for Default

§ 1208.601 General.

The decision as to the type of termination action to be taken (i.e., for default, for convenience, or a no-cost settlement) shall be made only after a review of cognizant experienced procurement and technical personnel, and by counsel assigned or available to the particular procuring activity or purchasing office. Under no circumstances should any notice of termination be furnished to the contractor until this review has been made. Careful consideration should be given to the Government's interests whenever small business guaranteed loans (see § 1201.705-4(d)), progress payments, or advance payments are involved.

§ 1208.602 Termination of fixed-price supply contracts for default.

§ 1208.602-3 Procedure for default.

The following procedures, prescribed by the General Services Administration, shall be followed in terminating for default delivery orders placed against Federal Supply Schedule contracts.

(a) *Ordering Office.* Before declaring a contractor in default, ordering offices should ordinarily notify the contractor in writing that unless satisfactory performance occurs by a specified date, which should allow a reasonable time for performance, his right to proceed further under the delivery order will be considered terminated and he

will be held liable for any excess costs resulting from purchasing the supplies or services elsewhere. This step will not be taken when the default involves an attempted fraud on the United States, or when it obviously would be futile, as for example, when the contractor has already declined to perform. Where excess costs are anticipated, the ordering office may withhold sufficient funds due to contractor as offset security. Ordering offices will endeavor to minimize excess costs to be charged against the contractor and to collect, by check or setoff, excess cost owed.

(b) *Federal Supply Service (FSS).* Where ordering offices are notified by the Federal Supply Service that it has declared the contractor in default, ordering offices will thereafter refuse to accept further performance by the contractor or place further delivery orders with it. Ordering offices will thereafter purchase against the account of the contractor from replacing contractors designated by the FSS or in such other manner as directed by the FSS.

(c) *Notification.* Ordering offices shall furnish to the Purchase Branch, FSS, Room 809, Crystal Mall, Building 4, Washington, D.C. 20406, the details concerning all material instances of unsatisfactory performance by the contractor, whether or not properly adjusted and settled. Ordering offices also shall report, as may be directed by the FSS, all purchases made against the account of a contractor placed in default by the FSS.

PART 1209—PATENTS, DATA, AND COPYRIGHTS

Sec.

1209.000 Scope of Section.

1209.000-50 Authority.

1209.000-51 Supply of Patented Components as GFP.

Subpart A—Patents

1209.103 Patent Indemnification of Government by Contractor.

1209.103-4 Waiver of Indemnity by the Government.

1209.110 Reporting of Royalties—Anticipated or Paid.

1209.112 Adjustments of Royalties.

Subpart B—Rights in Technical and Other Data and Copyrights

1209.202 Acquisition of Rights in Technical Data.

1209.202-50 Reporting of Improper Use of Data or Technical Data.

Subpart C—Foreign License and Technical Assistance Agreements

1209.304 Foreign License and Technical Assistance Agreements Between a Domestic Concern and a Foreign Government or Concern.

1209.304-2 Review of Agreements.

Subpart D—Processing Licenses, Assignments, and Infringement Claims

1209.401 Policy.

1209.401-50 Processing of Infringement Claims.

AUTHORITY: The provisions of this Subchapter A are issued under 5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DOD Directive 5105.22, January 5, 1977.

§ 1209.000 Scope of section.

§ 1209.000-50 Authority.

The Counsel, DLA, is authorized to act for the Director, DLA, on all patent, copyright, rights in data and trademark matters arising in the DLA. Any question on such matters shall be referred to the Counsel, DLA.

§ 1209.000-51 Supply of patented components as GFP.

Where patented or proprietary components are required in end items purchased by DLA activities, particularly military type items, consideration may be given to furnishing such components as Government-furnished property.

Subpart A—Patents

§ 1209.103 Patent indemnification of government by contractor.

§ 1209.103-4 Waiver of indemnity by the government.

Specific patents may be excluded in accordance with ASPR 9-103.4 only with the prior approval of the Counsel, DLA, or the Patent Counsel, DLA.

§ 1209.110 Reporting of royalties—anticipated or paid.

Counsel for the procuring activity concerned will forward to the Counsel, DLA, a copy of each royalty report received in accordance with ASPR 9-110 which indicates that royalties in excess of \$250 have been paid or are to be paid to any person or firm.

§ 1209.112 Adjustment of royalties.

The report required by ASPR 9-112 shall be made to Counsel for the procuring activity concerned who shall forward the report to the Counsel, DLA, for appropriate action.

Subpart B—Rights in Technical and Other Data and Copyrights

§ 1209.202 Acquisition of rights in technical data.

§ 1209.202-50 Reporting of improper use of data or technical data.

Any direct or indirect charge of improper use of data of technical data received by any procuring activity, shall be referred to Counsel for the activity who will notify and coordinate all actions on such cases with the Counsel, DLA.

Subpart C—Foreign License and Technical Assistance Agreements

§ 1209.304 Foreign license and technical assistance agreements between a domestic concern and a foreign government or concern.

§ 1209.304-2 Review of agreements.

Proposed foreign license and technical assistance agreements between domestic concerns and foreign governments or concerns forwarded to the DLA under the provisions of ASPR 9-304.1 shall be referred to the Counsel, DLA, for action in accordance with ASPR 9-304.2.

Subpart D—Processing Licenses, Assignments, and Infringement Claims

§ 1209.401 Policy.

§ 1209.401-50 Processing of infringement claims.

(a) Any direct or indirect charge or threat of patent, trademark or copyright infringement received by any procuring activity, shall be referred to Counsel for the activity who will notify and coordinate all actions on such cases with the Counsel, DLA.

(b) The Counsel, DLA, or the Patent Counsel, HQ DLA, are hereby authorized to make acquisitions in accordance with 10 U.S.C. 2386 and to enter into agreements in settlement of claims under the Foreign Assistance Act of 1961 (22 U.S.C. 2356) and 35 U.S.C. 181-188. Coordination with the Departments of the Army, Navy and Air Force in the processing and final disposition of each claim shall be effected by the Counsel, DLA or the Patent Counsel, HQ DLA.

PART 1210—BONDS, INSURANCE, AND INDEMNIFICATION

Subpart A—Bonds

Sec.
1210.112 Execution and Administration of Bonds and Consents of Surety.

AUTHORITY: The provisions of this Subchapter A are issued under 5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DOD Directive 5105.22, January 5, 1977.

Subpart A—Bonds

§ 1210.112 Execution and administration of bonds and consents of surety.

(b) *Administration.* All bonds and all consents of surety will be reviewed by counsel of the activity for legal sufficiency. The original signed bond shall subsequently be retained with the original copy of the contract where practical.

PART 1212—CONTRACTOR INDUSTRIAL LABOR RELATIONS

Subpart A—Basic Labor Policies

Sec.
1212.101 Labor Relations.
1212.101-1 General.
1212.101-3 Reporting of Labor Disputes.
1212.107 Labor Standards Enforcement Report.

Subpart F—Walsh-Healey Public Contracts Act

1212.604 Eligibility of a Bidder or Offeror.
1212.650 Exception Not Stated in the Publications Furnished Contracting Officers.

Subpart G—Fair Labor Standards Act of 1938

1212.702 Suits Against Government Contractors.

Subpart H—Equal Employment Opportunity

1212.804 Equal Opportunity Clauses.
1212.804-50 Equal Employment Opportunity Compliance Responsibilities.
1212.807 Affirmative Action Programs.
1212.808 Compliance Reviews and Clearances.
1212.808-50 Contractor Compliance.

AUTHORITY: The provisions of this Subchapter A are issued under 5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DOD Directive 5105.22, January 5, 1977.

Subpart A—Basic Labor Policies

§ 1212.101 Labor relations.

§ 1212.101-1 General.

Whenever labor representatives request permission to enter a DLA installation on which private contract employees are engaged in contract work to conduct union business during working hours, the commanding officer may admit such representatives, provided (a) the presence and activities of the labor representatives will not interfere with the progress of the contract work involved, and (b) the entry of such representatives to the installation shall not violate pertinent safety or security regulations. Commanding officers shall take all necessary action to enforce the above policy and facilitate ready access to worksites within military installations. One method which has met with success in appropriate situations is the maintenance by commanding officers of a list of labor representatives, who have been cleared with regard to safety and security considerations and who may be admitted into respective installation to conduct union business. The determination as to who are appropriate labor representatives should be made by the commanding officer on recommendation of the contracting officer and representatives of the DLA Industrial Labor Relations Office after consultation with local union officials. Business offices or desk space for labor organizations for solicitation of membership, collection of dues, or

other business of the labor organization not directly connected with the contract work, shall not be permitted on the installation except for the routine functions of the working steward whose union duties are incidental to his assigned job. In the event that a commanding officer of an installation or the contracting officer or his representative denies entry to a labor representative for any reason such officer shall notify, through channels, the DLA Industrial Labor Relations Advisor, HQ DLA, ATTN: DLA-HR. Such notification shall include the reasons for denial, including names, addresses, of representatives denied entry, and union affiliation, if known, of such representatives. An information copy of each notification shall be forwarded to HQ DLA, ATTN: DLA-PRS.

§ 1212.101-3 Reporting of labor disputes.

The report of labor disputes on DD Form 1507, Work Stoppage Report, in accordance with ASPR 12-101.3(c), is assigned Reports Control Symbol DD I&LAR/1153.

§ 1212.107 Labor Standards Enforcement Report.

The semiannual report of compliance with and enforcement of the labor standards provisions of the Davis-Bacon Act and Contract Work Hours and Safety Standards Act shall be prepared in accordance with ASPR 12-107 and forwarded to HQ DLA, ATTN: DLA-PRS, so as to arrive not later than 15 days after the close of the reporting period (31 December and 30 June).

Subpart F—Walsh Healey Public Contracts Act

§ 1212.604 Eligibility of a bidder or offeror.

(a) In those instances where the contracting officer makes a determination of ineligibility as a manufacturer or regular dealer, such determination, together with supporting documentation, shall be submitted to the Head of the Procuring Activity or his designee for review and approval.

(b) In the case of DDMT, DDTC, DDOU, DIPEC, DLSC and DASC, the review responsibility set forth in § 1212.604 is hereby delegated to the Commander concerned, or his designee, in accordance with § 1201.201-14.

§ 1212.650 Exception not stated in the publications furnished contracting officers.

Certain of the exceptions stated in the publications furnished contracting officers which contain no specific expiration date may have been rescinded by the Secretary of Labor since date of publication. In case of doubt, inquiry may be directed to the appropriate Regional Director, Wage and Hour and

Public Contracts Divisions, Department of Labor indicated in ASPR 12-607.

Subpart G—Fair Labor Standards Act of 1938

1212.702 Suits against Government contractors.

Cost-plus-a-fixed-fee contractors and subcontractors should be advised that immediately upon receipt of process in any legal action filed against them they must furnish a copy of all papers to the contracting officer. An immediate report of the legal action shall be made direct to the Counsel, HQ DLA.

Subpart H—Equal Employment Opportunity

§ 1212.804 Equal opportunity clauses.

§ 1212.804-50 Equal employment opportunity compliance responsibilities.

(a) In all cases in which a Center or Depot retains the administration of a contract which contains the Standard Equal Opportunity clause or an approved local plan bid conditions, a letter of notification of such award shall be sent to the cognizant DCASR which includes the location in which the work is to be performed. The DCASR Contract Compliance Office (CCO) has the responsibility for insuring contractor compliance with the EEO provisions. The letter of notification will be marked to the attention of the Compliance Office and will contain the following information.

- (1) Contract number and dollar value.
- (2) Contractor name and address.
- (3) Nature of services to be performed.
- (4) Site of work.

§ 1212.807 Affirmative action programs.

§ 1212.807-2 Construction contracts.

The DCASR CCO shall be notified of the date, time and place of any pre-construction conferences so that the Compliance Office may have an opportunity to review the EEO requirements with the contractor.

§ 1212.808 Compliance review and clearances.

§ 1212.808-50 Contractor compliance.

(a) Policy Branch, Procurement Division, Directorate of Procurement (DLA-PPR) will issue semi-monthly a list of contractors found not in compliance with current Equal Employment Opportunity (EEO) regulations. This list shall be utilized by DLA contracting elements to determine, from an EEO standpoint, the eligibility of a contractor for an award.

(b) DLA PPR will maintain a master list of contractors who, for reasons of noncompliance with EEO regulations,

have been debarred. Notices of debarment/reinstatement will be issued by DLA-PPR as they are received.

(c) Any questions relating to the eligibility of a contractor for award should be directed to HQ DLA, ATTN: DLA-PPR.

PART 1213—GOVERNMENT PROPERTY

Subpart C—Providing Government Property to Contractors

Sec.

1213.301 Providing facilities.

Subpart E—Competitive Advantage

1213.501 Policy.

AUTHORITY: The provisions of this Subchapter A are issued under 5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DOD Directive 5105.22, January 5, 1977.

Subpart C—Providing Government Property to Contractors

§ 1213.301 Providing facilities.

(a)

(1)

(i) Requests for new facilities will be forwarded to HQ DLA, Attn: DLA-P, for approval by the Executive Director or Deputy Executive Director, Procurement. Sufficient documentation will be provided with the request to show that the need for supplies or services cannot be met by any other practical means or that the furnishing of facilities will be in the public interest. Commanders of Defense Supply Centers, DIPEC, DDMT, DDOU and DDTC are authorized to provide existing facilities under the conditions set forth in ASPR 13-301.

(ii) A copy of the contractor's written statement, expressing his unwillingness or financial inability to acquire the necessary facilities with his resources, will be included as a part of requests for new facilities. A copy of the written statement obtained in connection with provision of existing facilities will be furnished to HQ DLA, Attn: DLA-PR, within 15 days after receipt from contractor.

The foregoing actions are not required when Government facilities to be utilized in the performance of a DLA contract are in the contractor's possession under a prior authorization. (ASPR Case 72-2-2).

(b) When determination is made that solicitations should include an offer to furnish existing Government facilities because adequate price competition cannot be otherwise obtained, the case will be fully documented to indicate the basis for such determination. Referral to HQ DLA, Attn: DLA-PR is not required prior to inclusion of an offer to provide existing facilities except for Approved Plant Equipment Packages. Requests for use of equipment included in such packages will be

processed in accordance with procedures set forth in paragraph 10-403, DLAM 4005.1.

Subpart E—Competitive Advantage

§ 1213.501 Policy.

It is DOD policy to eliminate the competitive advantage that might otherwise arise from acquisition or use of Government production and research property. This is accomplished by charging rental or by use of rental equivalents in evaluating bids and proposals. Within the Defense Logistics Agency, the more desirable procedure is to develop an evaluation factor equal to the rent (ASPR 13-502.2), obtain the necessary approvals to authorize rent-free use of the Government property and award less the evaluation factor. A lower unit cost is thereby achieved and procurement funds are conserved. Rental monies eventually flow back into the U.S. Treasury but at the expense of the DLA budget. Accordingly, the rental procedure will be utilized only when absolutely necessary.

PART 1214—PROCUREMENT QUALITY ASSURANCE

Subpart C—Contract Provisions

Sec.

1214.305 Places of performance of Government procurement quality assurance actions.

1214.305-2 Government procurement quality assurance at source.

1214.305-3 Government procurement quality assurance at destination.

1214.306 Acceptance of supplies or services.

Subpart D—Government Procurement Quality Assurance Actions

1214.406 Nonconforming supplies and services.

1214.406-50 Nonconforming supplies and services.

1214.406-51 Definitions.

1214.406-52 Processing of requests for waiver.

AUTHORITY: The provisions of this Subchapter A are issued under 5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DOD Directive 5105.22, January 5, 1977.

Subpart C—Contract Provisions

§ 1214.305 Places of performance of Government procurement quality assurance actions.

§ 1214.305-2 Government procurement quality assurance at source.

In addition to the provisions of ASPR 14-305.2, Government procurement quality assurance actions will be performed at source for supplies having a critical application. When a critical application item is procured from a sole source and the supplier will not permit source inspection, recommend this matter be negotiated with adequate consideration flowing to

the Government, on a case-by-case basis, for the added cost of performance of the necessary technical inspection at destination at a designated Government laboratory or at the using activity.

§ 1214.305-3 Government procurement quality assurance at destination.

Prior to designating that Government procurement quality assurance actions will be performed at destination the contracting officer shall determine that the:

(a) depot or receiving activity has the technical ability to perform the inspections;

(b) necessary technical data, specifications, blue prints, etc., are available at the receiving point or will be furnished the receiving activity prior to receipt of the supplies; and

(c) equipment required to perform the inspection is available at the receiving point.

§ 1214.306 Acceptance of supplies or services.

(c) When it is desirable, based upon the criteria contained in ASPR 14-306(c), to use a contractor's certification that supplies conform to contract requirements either as additional assurance to inspection or as the sole basis for acceptance without prior Government inspection, the following will apply:

(1) A clause worded substantially as follows will be inserted in the contract: Certificate of Conformance (DLA 1975 MAY).

(a) Unless specified otherwise in the contract award, the contractor is required to deliver the supplies to be furnished hereunder with a "Certificate of Conformance" when inspection and acceptance is at destination, and, at the option of the Government Contract Administration Office, may be required to deliver the supplies with a "Certificate of Conformance" when inspection and acceptance is at source. The contractor signed certificate shall be attached to or included on the top copy of the DD 250 or 1155 copies distributed to the payment office. Where acceptance is at destination, a copy of the signed certificate shall also be attached to or entered on copies of the DD 250, DD 1155 or other appropriate documents accompanying the shipment. This certificate shall read as follows:

"I hereby certify that on (Date) _____ the (contractor's name) _____ shipped the supplies called for by Contract No. DLA _____ via (carrier) _____ on (Bill of Lading or Shipping Document)

in accordance with all applicable requirements for shipment. I further certify that the supplies are of the

quality specified and are in all respect in conformance with the contract requirements, including specifications and/or drawings, preservation, packaging, packing and marking requirements; physical item identification (part number), and in the quantity shown on this, or the attached acceptance document."

Date of Execution: _____

Signature _____

Title: _____

(2) The execution of the COC as a condition for acceptance by the Government is advantageous because of the reduction in time and cost of Government inspection without reducing the quality of supplies received. The contractor's COC is used principally (i) as an alternative to Government procurement quality assurance at source, (in this instance the contract should specify inspection and acceptance at destination); (ii) at the option of the Government Contract Administration Office when inspection and acceptance are at source and the value of supplies or the condition of purchase, delivery, or receipt or use thereof makes it desirable to have additional assurance that supplies conform to contract requirements; and (iii) at the option of the Government Contract Administration Office, when inspection and acceptance are at source and COC is used as the sole basis for acceptance for supplies shipped directly to bases in CONUS and overseas.

(3) The inclusion of post acceptance remedies in the COC clause is not appropriate. Post acceptance remedies for purchase orders (ASPR 3-608) are limited to the commercial warranty on the reverse side of DD Form 1155. For other contracts which include the inspection clause in ASPR 7-103.5, inspection rights of the Government are cut off after acceptance of supplies except as regard latent defects, fraud or such gross mistakes as amount to fraud. If post acceptance rights are desired, warranty clauses should be prepared in accordance with criteria of ASPR 1-324 for inclusion in the contract.

(4) The use of such terminology as "inspection and acceptance by COC" is improper and is not authorized. The place of acceptance, as determined under the criteria set forth in ASPR 14-305, 14-307 and 14-308, shall be clearly stated on the contract or purchase order. Except as authorized under Fast Pay procedures, acceptance by the contracting officer is required prior to payment. The COC and the Fast Pay procedure, ASPR 3-606 are separate and distinct concepts and will not be combined in any manner.

(5) When a contract or purchase order is assigned to a Contract Administration Office (CAO) for inspection and acceptance at source, the CAO's

right to base its acceptance upon actual inspection of the supplies shall not be abridged. The insertion of a COC clause that requires the CAO to accept the supplies based solely upon a COC is not authorized. The CAO shall be given the options of performing inspection and/or based upon contractor's reputation or past performance, requiring the contractor to furnish a COC for use as additional assurance or as the sole basis for acceptance of supplies and services.

Subpart D—Government Procurement Quality Assurance Actions

§ 1214.406 Nonconforming supplies and services.

§ 1214.406-50 Nonconforming supplies and services.

(a) ASPR 14-406 states that it is Government policy that supplies which do not conform in all respects to the contract requirements should be rejected, but provides for exceptions when acceptance of such nonconforming supplies is in the interests of the Government (e.g., for reasons of economy or urgency). This ASPR guidance provides the basis for the contractor practice of requesting waiver of nonconformances in supplies that have been tendered to and rejected by a Government quality assurance representative.

(b) It is DLA policy that the granting of waivers shall be emphatically discouraged in all cases where the contractor is at fault in producing the nonconforming supplies.

(c) For supplies having minor nonconformances, as defined below, contractor requests for waiver shall be rejected except in those few cases where it is clearly advantageous to the Government to accept the nonconforming supplies and they are suitable "as is" for the intended use or the nonconformance results in a superior product.

(d) For supplies having major nonconformances, as defined below, the final determination as to their suitability for use is the responsibility of the activity responsible for technical requirements. The concurrence of such technical activity shall be obtained before waiver of a major nonconformance is granted.

§ 1214.406-51 Definitions.

(a) *Nonconforming Supplies.* Those supplies which contain one or more departures from contractual requirements. Nonconformances are categorized as follows:

(1) *Major Nonconformance.* The failure to conform adversely affects one or more of the following major areas: (i) performance; (ii) durability; (iii) reliability, interchangeability or maintainability of the item or its repair parts; (iv) effective use or operation;

(v) weight or appearance (where a factor); or (vi) health or safety.

(2) **Minor Nonconformance.** The failure to conform does not adversely affect any of the major areas listed above. However, when several minor nonconformances exist on a single item, a determination will be made as to whether the cumulative effect is, in reality, a major nonconformance.

(b) **Request for Waiver.** A request for acceptance of nonconforming supplies or services which is prepared by a contractor on his own form or letterhead, unless a specific form is designated by contract.

(c) **Waiver.** A written authorization to accept an item which during production or upon being offered to the Government for inspection and acceptance is found to depart from specified requirements, but nevertheless is considered suitable for use "as is."

§ 1214.406-52 Processing of requests for waiver.

The procuring contracting officer (PCO) shall:

(a) Process requests for waiver expeditiously to avoid production delays and possible claims against the Government, and to assure full utilization of the technical information obtained as a result of waivers.

(b) Ascertain whether the contractor's request for waiver was forwarded through the administrative contracting officer (ACO) and includes the ACO's recommendations for approval or disapproval. The PCO must have the ACO's comments and recommendations in order to properly evaluate a request for waiver. Conversely, the ACO must be fully apprised of the request for waiver in order to assure that the contractor has taken action to correct and prevent recurrence of the conditions causing the nonconformance. Therefore, requests for waiver submitted directly to the PCO shall be returned to the contractor for resubmission through the ACO, except in those situations where time is an essential element. In such cases, the ACO's recommendations will be obtained by the most expeditious means available.

(c) Ascertain the supply position of the item and the effect that rejecting the request for waiver will have on the delivery schedule.

(d) Refer the request for waiver to the quality element of the DSC for evaluation and recommendations. The quality element shall serve as the technical support focal point for waiver actions at the DSC's.

(e) Make a determination, based on the above, as to whether the request for waiver should be accepted (if a minor nonconformance), rejected or referred to the appropriate technical activity for concurrence.

(f) Modify those contracts under which nonconforming supplies are ac-

cepted to provide for an equitable price reduction or other consideration. In the case of minor nonconformances, the contract shall not be modified except when it appears that the price reduction or other consideration accruing to the Government will exceed the administrative cost to the Government of processing a contract modification (normally \$100), or the best interests of the Government otherwise require that the contract be modified.

(g) Consider repetitive requests for waiver as a factor when making determination of a contractor's responsibility.

PART 1215—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart A—Applicability

Sec.

1215.107 Advance agreements on particular cost items.

AUTHORITY: The provisions of this Subchapter A are issued under 5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DoD Directive 5105.22, January 5, 1977.

Subpart A—Applicability

§ 1215.107 Advance agreements on particular cost items.

(e) The ASPR Committee will cause a master list to be published annually which will contain the names of commercial contractors, nonprofit institutions, and educational organizations operating under negotiated overhead rates (ASPR 3-700) for cost reimbursement type contracts and contractors selected for tri-service departmental negotiation of advance agreements for independent research and development and bid and proposal costs (ASPR 15-107, 15-205.35 and 15-205.3). Interim changes will be published as required and will show only the specific additions, deletions, or changes that have occurred.

(f) HQ DLA receives and will retain copies of reports/amendments of negotiated overhead rates and advance agreements for independent research and development, and bid and proposal costs for the entities on this master list. HQ DLA (DLA-PPP) will provide copies to DSCs upon request.

PART 1216—PROCUREMENT FORMS

Subpart A—Forms for Supply and Services Contracts

Sec.

1216.104 Instructions for preparation of forms for advertised and negotiated supply and services contracts (standard forms 33, 26, 30 and 18).

1216.104-1 General.

1216.104-2 Solicitation, offer, and award (standard form 33).

Subpart C—Purchase and Delivery Order Forms

1216.350 Blanket purchase agreement delivery ticket (DLA Form 470).

Sec.

1216.350-1 General.

1216.350-2 Procedure.

1216.350-3 General instructions for preparing the blanket purchase agreements delivery ticket.

Subpart H—Miscellaneous Forms

1216.850 Special quality assurance instructions.

1216.850-1 General.

1216.850-2 Conditions for use.

1216.850-3 Procedures.

1216.850-4 General instructions for preparing the special quality assurance instruction form.

1216.851 Request for contract review/approval (DLA Form 677).

1216.851-1 General.

1216.851-2 General instructions for preparation of DLA Form 677.

1216.852 Contract file content list (DLA Form 678).

1216.852-1 General.

1216.852-2 General instructions for preparation and use of DLA Form 678.

1216.853 Loan agreement for government property (DLA Form 491).

1216.854 Record of set-aside action (DLA Form 1360).

1216.854-1 General.

1216.854-2 General instructions for preparation and use of DLA Form 1360, May 1976.

AUTHORITY: The provisions of this Subchapter A are issued under 5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DOD Directive 5105.22, January 5, 1977.

Subpart A—Forms for Supply and Services Contracts

§ 1216.104 Instructions for preparation of forms for advertised and negotiated supply and services contracts (standard forms 33, 26, 30 and 18).

§ 1216.104-1 General.

(a) "Continental United States" is as defined in JCS Pub. 1; i.e., CONUS is limited to the 48 contiguous states and the District of Columbia, and excludes Alaska and Hawaii.

§ 1216.104-2 Solicitation, offer and award (standard form 33).

Instructions for block entries are as follows:

Block Number, Title and/or Instructions

9—Time for receipt of offers. The terms "Standard Time" and "Daylight Savings Time" or abbreviations thereof shall not be used in DLA Solicitations. In lieu thereof, the terms "Local time at the place of bid opening" or "local time at the place where proposals are received" shall be used. The first sentence of Block 9 on the SF 33 (For an IFB would now read as follows: "Sealed offers in original and . . . copies for furnishing the supplies or services described in the schedule will be received at the place specified in Block 8, OR IF HAND CARRIED, IN THE DE-

POSITORY LOCATED IN Building 4, 4D175, until 1:00 PM, local time at the place of bid opening, 25 May 1977."

Subpart C—Purchase and Delivery Order Forms

§ 1216.350 Blanket purchase agreement delivery ticket (DLA Form 470).

This form may be used when supplies or services are procured by means of a blanket purchase agreement (BPA). (See ASPR 3-605.3(f)(vi).)

§ 1216.350-1 General.

The Blanket Purchase Agreement Delivery Ticket is a cut sheet form and is designed to be used by the vendor as an acknowledgment of a call, notice of shipment, packing list, and invoice. This form eliminates the need for preparation by the contractor of separate forms for these purposes. Also, Government personnel requiring information on these forms will receive it on a standard format.

§ 1216.350-2 Procedure.

A supply of the forms may be provided by the Center to each contractor who has entered into a blanket purchase agreement with the Center. Upon the placing of a call the contractor may be required to complete the BPA delivery ticket based on information contained in the written or oral call in accordance with detailed instructions to be provided by the Center.

§ 1216.350-3 General instructions for preparing the blanket purchase agreement delivery ticket.

After the placing of each call, complete the call, complete the form in accordance with the general instructions below and any specific instructions you may receive with the placing of the call. Entries should be typed.

(a) Block 11. This is the date the supplies are to reach destination, not the date you make shipment. Convert the number of delivery days you offered to an actual date. For example, if you offered a 30 day delivery and received the oral or written call on October 1, enter 10/31/76 as the required date.

(b) Block 12. This is the date the supplies are to be shipped, not delivered.

(c) Blocks 13 through 19. Information for these blocks will be furnished by the Center at the time of the call. Enter the name and address of the consignee in Block 15.

(d) Blocks 21 through 23. Entries in these blocks will be made at the time of shipment. Enter actual date shipped or delivered. No partial shipments to a particular destination may be made. If more than one shipment is made against a call, prepare 2 copies

of this form for each shipment. Copies of the shipping documents may be attached as an alternative to completing Blocks 21 and 22.

(e) When using the form as an ACKNOWLEDGMENT OF CALL. Place a check mark on "*" copies of the form in the box "ACKNOWLEDGMENT OF CALL" (Block 9).

(f) When using this form as a NOTICE OF SHIPMENT. Place a check mark in the box "PACKING LIST" (Block 9) on "*" copies of the form in the box "NOTICE OF SHIPMENT" (Block 9).

(g) When using the form as a PACKING LIST. Place a check mark in the box "PACKING LIST" (Block 9) on "*" copies of the reproduced form for each consignee. Be sure Blocks 21 through 23 have been completed, as applicable, on the forms used. Send "*" copies to each consignee by placing copies inside the container or in an envelope attached to the exterior of the container.

(h) When using this form as an INVOICE. At the end of the billing period, fill in "*" copies of the reproduced form which includes the shipment data for all destinations of that call as follows:

(1) Place a check mark in the box marked INVOICE (Block 9) of each copy of the form.

(2) Sign and date Blocks 24 and 25 of the top copy only of the form. If the Blanket Purchase Agreement under which this call was issued does not provide for the fast payment procedure, the top copy must contain the signature and date (Blocks 27A and 27B) of the authorized Government representative receiving and/or accepting for the Government.

"*" The number required shall be in accordance with the needs of the Center.

Subpart H—Miscellaneous Forms

§ 1216.850 Special quality assurance instructions.

§ 1216.850-1 General.

The special quality assurance instruction form is designed to be used by the procurement contracting officer (PCO) and his quality assurance technical specialist to inform the Quality Assurance Representative (QAR), through the contract administration office (CAO), to whom the contract is assigned, of pertinent contract requirements and to provide him with the available quality history of the product and the contractor. The form also provides the QAR with the name, address and phone number of the cognizant technical specialist in the Center.

§ 1216.850-2 Conditions for use.

The Special Quality Assurance Instruction Form (DLA Form 970) is to

be used on all procurements of critical items.

§ 1216.850-3 Procedures.

When items that have been identified as having a critical application in accordance with DLA 3200.3, Identification, Processing and Procurement of Items with Critical Application, are to be procured, the appropriate Defense Contract Administration Services (DCAS) field activities or other agencies having inspection cognizance shall be alerted through use of DLA Form 970, regardless of the dollar value of the item or contract. Two copies of the completed form will be forwarded to the appropriate DCAS field activity as shown in DOD 4105.59-H, Directory of Contract Administration Services Components. The copies will be sent to the cognizant CAO quality assurance staff or attached to DCASR copies of the contracts at the time of contract distribution.

§ 1216.850-4 General instructions for preparing the special quality assurance instruction form.

Instructions for block entries are as follows (Entries should be typed):

Block Number, Title and/or Instructions

- 8—Contract Quality/Inspection Requirements—Identify the contract quality/inspection requirements using ASPR 14-301 as a guide.
- 9—Certificate of Conformance—Indicate "Required" when the contract states that COC may be used as the sole basis for acceptance. Indicate "Optional" when the contract states that COC may be used as an element incident to acceptance by the CAO.
- 10—Item Use—Use when applicable.
- 11—Authority for Acceptance of Non-conforming Supplies and Services is Withheld in Accordance with ASPR 14-406(b)(ii)—In accordance with ASPR 14-406(b)(ii) use only when PCO retains authority.
- 12—Special Contractor Examinations and Tests—Identify any special contractor examinations and tests the QAR should witness or monitor closely. Also, identify any special contractor examinations and tests for which the DSC quality assurance element desires to be present.
- 13 and 13a—To inform the QAR when and for what purpose DSC technical representatives will participate in the contractor test program.
- 14 and 14a—To provide verification test requirements and laboratory address.
- 15—Product Quality History—To provide QAR with pertinent details of product that would alert him to possible trouble areas.

16—**Contractor Quality History**—To provide QAR with a pertinent, general summary of the contractor's past performance, where the performance may affect the quality of the supplies or services being procured. Statements which because of their sensitive nature, would have to be classified as "For Official Government Use Only" will be avoided. If sensitive data must be provided the QAR, a statement to the following effect will be included: "The QAR should contact the individual shown in Block 18 for specific details relating to the quality history of the contractor".

17—**Remarks**—Identify any additional information or clarifying remarks which may be useful to the QAR that are not provided elsewhere on the form.

18—**DSC Contract for Quality Assurance**—Enter name, address and phone number of DSC specialist in Technical Operations assigned to the commodity.

§ 1216.851 Request for contract review/approval (DLA Form 677).

§ 1216.851-1 General.

DLA Form 677 shall be used as prescribed in § 1201.542-3. Requests for contract review/approval shall be addressed to the attention of DLA-PC.

§ 1216.851-2 General instructions for preparation of DLA form 677.

Instructions for block entries are as follows:

1/1a—Insert the subparagraph number of § 1201.452-2(a) that is applicable to the type of action for which approval is being requested. Place an "X" in the appropriate block to signify that the proposed action is either a new contract or a modification of an existing contract and, if the latter, the basis for the modification.

2/2a—Insert the date of expiration of the bid or proposal, or the date by which existing contract terms require exercise of the option. If the date entered allows less than thirteen calendar days from date of dispatch of the request (as entered in Block 16a), the request is to be considered a request for expedited review, and the block provided (2a) is to be checked. The reason for requiring expedited review is to be given in Block 14; e.g., explain why an extension of the bid or proposal cannot be obtained or should not be requested. If the date entered allows thirteen calendar days or more, but an expedited review is desired, the same procedure should be followed.

3—Describe the type of contract briefly to identify the terms governing

quantity, price and delivery, e.g., Firm Fixed Price (FFP), Requirements—Fixed Price, with EPA (Rqmts—FP w/EPA).

4/4a/4b/4c—If more than one CLIN is applicable because of different destinations (FOB destination), cite total quantity and give the unit price range. If both fob origin and fob destination prices are applicable, give the total quantity applicable to each, with the applicable prices/price ranges. When services are described, include the location of performance and the period during which services will be performed.

5/5a/5b—Check the applicable block to indicate whether the authority for purchase is a Center generated purchase request (PR) or a service generated military interdepartmental purchase request (MIPR). IOM's requesting establishment of requirement contracts are to be considered as PRs. Requests for procurement action by a military service on other than the prescribed MIPR form are to be considered as MIPRs. The receipt dates desired in 5a and 5b are: (a) for PRs the date of receipt in Procurement; (b) for MIPRs the date of receipt in the Center.

6a/6b/6c—Solicitation number(s) and amendment number(s) are to be listed, with issue and opening/closing dates applicable.

7/7a/8—Self-explanatory.

9/9a/9b—If the action proposed is on a definite quantity, firm fixed price basis, check "actual". For all other types, check "estimate". The total dollar value to be entered is that shown on the face of the proposed contract as the total amount, or total estimated amount of the action. If the action is a modification, only the amount, actual or estimated, of the modification is to be entered. Under 9b give the fixed dollar amount to be obligated by the contract execution for which funds have been committed.

9c/9d—If Government facilities are to be provided under the contract, check the GFP block. If facilities are being furnished rent free, insert "Rent Free" in lieu of dollar value. If facilities are being furnished on a rental basis, give the anticipated dollar amount of rental based on the proposed contract delivery schedule. If material is to be furnished, check the GFM block. If the material is being furnished by the bailment method, give the total estimated value of the material included in the total contract price. If GFM is not being provided by the bailment method, insert "N/A" in block 9d.

10—For Small Business Restricted Advertising, check negotiated, insert

the applicable authority and add "SBRA". For options, enter the information applicable to the basic contract.

11—If option is to a service contract to be extended without change in quantity of work covered, insert N/A after maximum %.

12a/12b—In block 12a, include the number of concerns to whom solicitations were sent as the result of individual requests, after issuance of the initial solicitation. Note that 12b requires the number of responsive bids/proposals.

13a/13b—Self-explanatory.

13c/13d—The price analysis, whether prepared by the cost and pricing element or by the contracting element, will be inserted under TAB 22 of the contract file and will include (i) the quantities, unit prices, fob points of preceding procurements (at least two); (ii) the basis for determining price reasonableness on the preceding procurements listed; and (iii) the increase/decrease in prices of the proposed contract as compared to the preceding procurements. The percentage relationship of the proposed price to the immediately preceding procurement will be shown in Block 13d. If the procurement is the first by DLA and information on prior procurements is not obtainable, a brief description of the efforts made to obtain prior procurement information will be included in Remarks (Block 14) and any back-up documentation included under TAB 22.

14-16—Self-explanatory.

17—Enclosure blocks to the DLA 677 have been prechecked. The contract file forwarded will contain all documents/papers which comprise the official contract file up to the date of the request, HQ DLA will review on the basis that there are no other applicable documents to be added to the official contract folder, unless the DLA Form 677 (Remarks Block 14) indicates that additional documentation is being obtained. The HQ DLA file copy to be provided is to contain the following: (A complete duplicate file will not be provided.).

(a) A copy of the DLA Form 677 request to include the names of signatures to the request, and the dates of the signatures.

(b) A copy of the DLA Form 678 which is identical to that in the contract file.

(c) A COMPLETE copy of the proposed contract, modification. When the request covers a proposed contract modification to a contract (or modification) which has been previously reviewed and approved by HQ DLA, the basic contract, or previously approved modification need not be provided;

however, any modifications made subsequent to the last HQ DLA review will be included.

(d) When applicable, a copy of the determination and findings authorizing negotiation.

(e) A copy of the price analysis/contracting officer's determination of price reasonableness and, where applicable, a copy of the record of prenegotiation review and the price negotiation memorandum. Should any of these documents refer to other documents in the official contract file for detail information, or depend on such documentation as the source of information a copy of those documents will also be included (this includes DCAS/DCAA reports, and preaward survey reports if applicable).

General

1. Should the space allotted on the DLA Form 677 be insufficient, the additional information is to be included on a plain sheet of paper identified as Sheet Nr.2, etc., to DLA 677, Contract Nr. (as shown under Block Nr. 8). The total number of pages will be shown in the space provided at the bottom of DLA Form 677.

2. The reverse of DLA Form 677 will be used both for replies to requests for preaward approvals (Section I) and to return contract files submitted as requested for post award review (Section II). When a post award review has been made, remarks previously furnished by separate letter will be included in the "Remarks" space on the DLA Form 677 reverse.

§ 1216.852 Contract file content list (DLA Form 678).

§ 1216.852-1 General.

DLA Form 678 shall be used as prescribed in § 1201.452-3.

§ 1216.852-2 General instructions for preparation and use of DLA Form 678.

(a) Filing Instructions.

(1) Contract file sections will be identified by inclusion of a divider annotated with the Section Identification and Title, e.g., "Section A—Planning and Solicitation." Sections A and B will be filed on the left side of the file folder with Section A on the bottom. Sections C and D will be filed on the right side of the file folder with Section C on the bottom.

(2) The lowest numbered TAB within each Section will be placed at the bottom of that Section. When multiple documents are present under a number TAB, i.e., correspondence, memoranda, etc., they will be filed chronologically with the most recent document on top.

(3) It is impossible to enumerate all of the factors or conditions which may require specific documentation over and above that normally required.

Therefore, as circumstances dictate, contracting officers will describe, under the appropriate "blank" TAB Nos., e.g., Nos. 14-17; 29-32, etc., such documentation as may be peculiar to the procurement involved and file same in the analogous contract file section.

(b) Contract Documentation—

(1) The documents identified on DLA Form 678 are those which are normally required to support an advertised/negotiated procurement action, other than a small purchase. The file sections provided establish the logical procurement cycle sequence of documentation. The completed file will constitute a complete chronological history of the transaction and permit ready reconstruction of the actions taken in processing the procurement.

(2) The following Sections discuss those elements of contract documentation which merit special attention and indicate documentation requirements which are most frequently "overlooked":

(i) Section A—Planning and Solicitation.

(A) *Tab No. 1 PR/MIPR.* The contract file must reflect the manner and extent to which the needs of the requiring activity have been met. It is essential, therefore, that in addition to the basic purchase authority, any changes and justification therefor be included under this Tab. In the case of amendments, the basis for change must be evidenced, e.g., in those instances where items on the purchase request have been completely lined out or quantities changed, indication must be made of the identity or authority of the individual or activity which requested/authorized the change. In other instances where contracts have been issued calling for something other than that specified on the PR/MIPR explanation must be included as to the authority/approval for the change and from whom received. Memoranda must adequately identify individuals referred to in memoranda, e.g., statements such as "this was discussed with and concurred in by Mr. Smith in Supply" are inadequate. An individual's full name, title or position and his relationship to the subject matter of the memorandum must be clearly established; this is of particular importance should post award questions arise. Requirements should be revalidated in those instances where excessive time has elapsed between the issuance of the Purchase Directive and consummation of the contract.

(B) *Tab No. 2 Specification/Drawing.* These documents in many instances either dictate source selection or indicate to the contracting officer the extent of possible competition. Any change either prior or subsequent to solicitation may affect final source

selection. When such changes are effected, explanatory memorandum (or actual documentation supporting the change) must be included in the file indicating as a minimum (1) the basis and authority for initiating specification/drawing change (2) coordination received from appropriate technical personnel and (3) approval/concurrence of the requiring activity. When specification/drawing changes are initiated/confirmed by the requiring agency on a PR/MIPR amendment, the documentation should be included in Tab No. 1 with an annotation in Tab No. 2 identifying the amendment number.

(C) *Tab No. 3 Procurement Plan (1201.2100-1).* The Procurement Plan will include, as a minimum, the information included in § 1201.2102. The use of preprinted forms for this purpose is acceptable.

(D) *Tab No. 4 Determination and Findings (Authority to Negotiate).* The determination to negotiate is governed by specific facts inherent in a proposed procurement; the D&F must include those facts which will clearly and convincingly establish that the use of formal advertising would not be practical. The information provided must be explicit, current (revised in those instances where requirements have changed subsequent to issuance of the initial D&F) and accurate as to (i) format (ASPR, Appendix J, Part 503, (ii) citation of appropriate negotiation authority ASPR 3-201 through 3-217), (iii) estimated dollar amount, including where applicable, the value of proposed option quantities and (iv) appropriate signatory authority and date. Each D&F must reflect the circumstances peculiar to the instant procurement. The use of previous D&Fs as a "model" often results in inaccuracies and the necessity to reaccomplish the D&F.

(E) *Tab No. 5 Nonpersonal Services Determination.* A statement by the contracting officer that the services proposed for procurement have been determined to be nonpersonal in nature is not sufficient to meet the requirements of ASPR 22-102.4. Such determination must include the reasons and all of the facts which were deemed to substantiate the nonpersonal aspect of the services; examples of criteria for characterizing services as nonpersonal rather than personal are set forth in ASPR 22-102.3.

(F) *Tab No. 6 DOL Wage Determination.* Department of Labor Wage Determinations are normally effective for a period of 120 days after issuance and must be in effect at the time of solicitation and at the time of award. When it is necessary to obtain extensions on determinations in order to carry them through the period until award is to be made, the documentation authorizing such extension by the

Department of Labor must be included under this Tab.

(G) *Tab No. 7 Small Business/Labor Area Determination.* The determinations required under ASPR 1-706 and 1-804.1 must be accurate and complete insofar as the reason given for not having a small business or labor surplus area set aside. Statements such as "a set-aside was not considered because of insufficient quantity" must be supported. Statements such as "no known source located in labor surplus area" must be based on historical and current facts. The information included in this determination must accurately reflect the consideration given to compliance with ASPR 1-706.1 and 1-804.1; the information included therein imposes, in turn, a responsibility to make a realistic evaluation of requirements and a current review of possible sources to substantiate the information used in determining the proposed procurement method.

(H) *Tab No. 10 Source List.* The list of sources initially solicited and those to whom solicitations were subsequently issued as a result of requests are to be included; in the latter case, the date requested solicitation was issued will be indicated. Where it is clear that a single source of supply exists, the reason for soliciting any additional firms will be included under this Tab.

(I) *Tab No. 13 IFB/RFP & Amendment.* The contract file must include the solicitation document and, as applicable, any amendments thereto. With respect to the latter, it is of utmost importance that amendments accurately reflect their issuance date. Inclusion of this date in Block 2, "Effective Date" of Standard Form 30 is extremely important if for no other reason than to preclude any controversies which might arise as to whether offerors were provided sufficient time to respond to the amendment. In case of oral solicitations, the requirements of ASPR 3-501(d)(ii) must be satisfied, i.e., with documentation supporting the fact that use of oral solicitation had been approved at a level higher than the contracting officer. As the use of oral solicitation requires careful monitoring, such documentation is extremely important.

(ii) *Section B—Preaward Support Data:*

(A) *Tab No. 18 Abstract of Bid Proposal.* Generally, abstracts on formally advertised solicitation are found to be complete and accurate. The same care must be taken in the preparation of an abstract on negotiated procurements, i.e., any conditions of the offers which are related to their evaluation must be included on the abstract; if lengthy, the "Remarks" column should be annotated with information indicating the location in the offer of the condition, e.g., "See page — of the proposal for exception to specification."

(B) *Tab No. 19 Packaging/Transportation/Freight Rate Data.* Inclusion of Transportation/Freight Rate Data, normally provided the contracting officer by the Center transportation activity, is essential as it enables a ready means of determining the manner in which transportation costs were applied in arriving at the evaluated prices. Files must also include sufficient information to substantiate the equitability of packaging costs. Statements in the price analysis or PNM indicating that a price increase is not unreasonable because the contracting officer has found it to be "attributable to the requirement for Government specification pack in lieu of normal commercial pack" must be supported, i.e., must indicate what the differential is and that technical personnel have, in fact, reviewed the costs associated with Government packaging requirements versus commercial packaging to arrive at figures which support the price reasonableness conclusion.

(C) *Tab No. 20 Cost/Pricing Data.* All cost or pricing data received from the offeror in support of his proposal is to be included under this Tab. If any data should be included in correspondence dealing with other matters which are pertinent to the final contract, e.g., delivery schedule, contract clauses, etc., the original correspondence will be filed under this Tab and a cross reference (or copy of such correspondence) placed in Tab No. 44. Submission/acceptance of inadequate or incomplete cost or pricing data is a recurring problem. To establish completeness, each data element must be identified as to (1) what it is, (2) where it is, (3) what it represents and (4) how it was used. A fully completed "Reference" column on the DD Form 633 is the key to these four points. If the data are not complete, that required must be obtained from the offeror; it is neither the responsibility of DCAS or the auditor to obtain the data. The review of data for adequacy and any requirement placed on the contractor to submit additional data required must be made prior to forwarding request to DCAS for audit. In those instances where time is of the essence, it is permissible to request the contractor to submit copies of any additional data direct to the cognizant DCAS/DCAA activity; the original of such documents to be provided the purchasing activity. Immediately upon receipt of such additional required data, it must be reviewed to assure it is adequate. The cost/price analysis element is charged with responsibility for determining the adequacy of data received; however, the final responsibility rests with the contracting officer.

(D) *Tab No. 21 Field Pricing Report/Waiver.* When field pricing support is requested from the cognizant contract administration services activity pursu-

ant to ASPR 3-801.5, the report obtained, together with any attached assist reports will be included under this Tab. If the authority contained in ASPR 3-801.5 to waive field pricing support is exercised by the contracting officer, his determination and the supporting available information on which the determination is based will be included, e.g., should part of the available information include a recent, prior field pricing support report, a copy of the prior field pricing support report will be included.

(E) *Tab No. 25 Certificate of Current Cost/Pricing Data.* Often a contractor will provide a Certificate of Current Cost or Pricing Data at the close of the negotiation session and will subsequently confirm, by letter, details of the agreements reached. In some instances, the confirming letter will include data which although previously discussed and accepted, have not previously been presented in writing. In such cases, the Certificate of Current Cost or Pricing Data presented at the close of negotiations becomes invalid; a new Certificate must be obtained to reflect the contractor's last data submission upon which the final price agreement was concluded.

(F) *Tab No. 26 Government Facilities Use Approval.* ASPR 13-402 requires a determination that the Government will receive adequate compensation for the contractor's use of Government property through reduced costs or otherwise. This determination is mandatory to support a proposal to provide a contractor with Government facilities.

(G) *Tab No. 29.* This tab will be used to incorporate, when applicable, information received from a cognizant ACO relative to the acceptability of the contractor's Disclosure Statement when the firm has indicated submission of same under ASPR clause 7-2003.67 of the contract schedule.

(iii) *Section C—Other Support Data:*

(A) *Tab No. 34 Unsuccessful Bid/Proposal.* Required under this Tab along with the unsuccessful bid/proposal itself, is the notification to the offerors (either that already issued or that proposed to be issued) that bids/offers were unacceptable and the reasons therefor.

(B) *Tab No. 36 Determination of Late/Bid Proposal.* All actions taken in accordance with the procedures prescribed under ASPR 2-303 and 3-506 will be included under this Tab.

§ 1216.853 Loan agreement for Government property (DLA Form 491).

DLA Form 491 is authorized for use in lending Government-owned property to prospective bidders or offerors in accordance with § 1250.101.

§ 1216.854 Record of set-aside action (DLA Form 1360).

§ 1216.854-1 General.

DLA Form 1360 shall be used as prescribed in § 1201.706-1.

§ 1216.854-2 General instructions for preparation of DLA Form 1360.

The header portion of this form includes check-off boxes within the block, "Type of Action." The appropriate box should be checked off to indicate whether action contemplates an initial set-aside determination; modification of an existing determination; or withdrawal of an existing determination. The remaining blocks within the header portion of the form are self-explanatory. Instructions for section/item/block entries are as follows:

§ 1216.854-2 General instructions for preparation and use of DLA Form 1360, May 1976.

Section, Item/Block Number, and Instructions

Section I, Item 1—Enter date bids/offers were opened on last procurement.

Section I, Item 1a—Enter total numbers of bids received on most recent procurement, broken out by bidder preference status or other status in the blocks provided; i.e., small business concerns which are also LSA concerns; small business concerns which are not LSA concerns; or large business concerns which are either LSA qualified or are not LSA qualified.

Section I, Item 1b—Enter numbers of bids/offers received on the most recent procurement which were determined to have fallen within a competitive price range. Breakout by bidder preference status or other status, as appropriate.

Section I, Item 2—Enter numbers of firms to be solicited on current procurement (through review of bidders lists and/or personal contracts). Breakout by bidder preference status or other status.

Section II—Self-explanatory.

Section III—Use in conjunction with remarks block to support unrestricted procurement or the use of a lower priority set-aside in accordance with the order of preference set forth in ASPR 1-706.1. Individual check-off items are self-explanatory.

Sections IV and V—Self-explanatory.

PART 1217—EXTRAORDINARY CONTRACTUAL ACTIONS TO FACILITATE THE NATIONAL DEFENSE

Subpart B—Requests for Contractual Adjustment

Sec.

1217.201 Authority of the Director.

Sec.

1217.203 Authority of other officers and officials.

1217.207 Submission of requests by contractors.

1217.207-3 Records.

1217.208 Processing cases.

1217.208-2 Disposition below secretarial level.

1217.208-3 Submission of cases to the Contract Adjustment Board.

1217.208-5 Maintenance of records.

1217.208-6 Interdepartmental coordination.

Subpart C—Residual Powers

1217.301 Delegation of authority.

1217.304 Maintenance of records.

Subpart D—Records of Requests and Dispositions

1217.403 Sample format for preliminary and final records.

AUTHORITY: The provisions of this Subchapter A are issued under 5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DOD Directive 5105.22, January 5, 1977.

Subpart B—Requests for Contractual Adjustment

§ 1217.201 Authority of the Director, DLA.

Authority vested in the Director under ASPR 17-201(b) has been delegated to Counsel and Assistant Counsel, DLA.

§ 1217.203 Authority of other officers and officials.

The authority in ASPR 17-203(a) (i) and (ii) has been delegated to HPAs. This authority may be redelegated only to a staff official reporting directly to the HPA. Two copies of any redelegation shall be furnished the Counsel, DLA, one copy of which will be transmitted to the Office, Secretary of Defense (ODDR&E).

§ 1217.207 Submission of requests by contractors.

§ 1217.207-3 Records.

Records required by ASPR 17-207.3 shall be forwarded to the Counsel, DLA.

§ 1217.208 Processing cases.

§ 1217.208-2 Disposition below secretarial level.

The documents required by ASPR 17-208.2(b) shall be forwarded to the Counsel, DLA. When a procuring activity denies a request, a copy of the letter of explanation to the contractor shall be included.

§ 1217.208-3 Submission of cases to the Contract Adjustment Board.

Cases not within the approval authority of HPAs and any doubtful or unusual cases shall be forwarded to Counsel, DLA, for further processing. The forwarding letter shall contain the information and evidentiary materials outlined in ASPR 17-208.3.

§ 1217.208-5 Maintenance of records.

The records required by ASPR 17-207.3, 17-208.2(b) and 17-208.4(a) and (b) shall be maintained by the Counsel, DLA.

§ 1217.208-6 Interdepartmental coordination.

The procuring activity responsible for processing a contractor's request for contractual adjustment shall be responsible for establishing liaison and joint action with other Military Departments and other departments and agencies of the Government, except that the Counsel, DLA, shall have such responsibility after any case is forwarded for further processing.

Subpart C—Residual Powers

§ 1217.301 Delegation of authority.

Authority vested in the Director under ASPR 17-201 has been delegated to Counsel and Assistant Counsel, DLA.

§ 1217.304 Maintenance of records.

Counsel, DLA, shall be responsible for maintaining the records required by ASPR 17-303(b) (RCS DD-I&L(A)597).

Subpart D—Records of Requests and Dispositions

§ 1217.403 Sample format for preliminary and final records.

Record of the field activity responsible for the case when submitting preliminary and final records described in ASPR 17-401 and 402.

PART 1219—TRANSPORTATION

Subpart A—Introduction

Sec.

1219.104 F.O.B. Point.

1219.104-2 Determination of F.O.B. Terms of Procurement of Items Originating in the Continental United States.

Subpart B—Planning and Solicitation

1219.213 Shipments to Ports.

1219.213-50 Designation of Ports for Bid Evaluation.

Subpart C—Evaluation of Bids and Proposals

1219.301 Transportation Rates and Related Costs to be Used.

1219.301-1 General.

1219.301-50 Port Handling and Ocean Costs in Bid Evaluation.

AUTHORITY: The provisions of this Subchapter A are issued under 5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DOD Directive 5105.22, January 5, 1977.

Subpart A—Introduction

§ 1219.104 f.o.b. point.

§ 1219.104-2 Determination of f.o.b. terms of procurement of items originating in the Continental United States.

Each requirement considered for purchase of an f.o.b. destination only

basis under the authority of ASPR 19-104.2(d)(1)(VI) shall be considered on its own merits. If it is decided to effect purchases on an f.o.b. destination only basis, the contract file shall be documented to reflect the basis on which the decision was reached.

Subpart B—Planning and Solicitation

§ 1219.213 Shipments to ports.

§ 1219.213-50 Designation of ports for bid evaluation.

When a contract will not generate any shipments destined overseas for which an Export Release is required (less than 10,000 lb., etc., Military Traffic Management Regulation paragraph 20205), offers shall be solicited only f.o.b. appropriate ports published in Appendix G of DOD Regulation 4500.32-R (MILSTAMP). The supporting provision in ASPR 7-2003.20 shall be included in the solicitation and be modified to:

- (a) Delete paragraph B pertaining to f.o.b. origin basis;
- (b) Delete the following from paragraph C(2) "Unless bids (or offers) are applicable only to f.o.b. origin delivery under Government bills of lading (see B above)";
- (c) Include the applicable port handling and ocean charges adjacent to the port(s) listed in paragraph D; and
- (d) Delete paragraph E pertaining to ports nominated by bidder (offeror).

Subpart C—Evaluation of Bids and Proposals

§ 1219.301 Transportation rates and related costs to be used.

§ 1219.301-1 General.

§ 1219.301-50 Port handling and ocean costs in bid evaluation.

Those port handling and ocean charges available at time of issuance of a solicitation shall be published in those solicitations for the procurement of supplies for overseas shipment. The provision set forth below, advising that these charges are tentative and not necessarily those that will be used in the evaluation, shall also be included in the solicitation, just below any charges published. This provision will preclude the need for extension of opening dates or cancellation of solicitations and will still permit award to that bidder who is, in fact, low at time of bid opening as a result of any change in charges after issuance of the solicitation.

Port Handling and Ocean Costs in Bid Evaluation (DLA APR 1975)

The above tentative port handling and ocean freight charges are set forth for the information of offerors. In evaluating offers received in response to this solicitation, the Govern-

ment will utilize those charges which are on file as of the date of bid opening (or closing time specified for receipt of proposals) and effective for the date of expected initial shipment. A list of port handling and ocean freight charges actually used in evaluation, if substituted for any listed above, will be furnished interested offerors upon request.

PART 1220—ADMINISTRATIVE MATTERS

Subpart B—Uniform Procurement Instrument Identification Numbers

Sec.

- 1220.203 Uniform procurement instrument identification numbers.
- 1220.203-1 Elements of number.
- 1220.204 Supplementary procurement instrument identification numbers.
- 1220.204-50 First delivery orders against indefinite delivery type contracts.

Subpart G—Assignment of Contract Administration

- 1220.703 Retention of contract administration by the purchasing office.
- 1220.703-50 Support administration.
- 1220.706 Designation of the disbursing office.

AUTHORITY: The provisions of this Subchapter A are issued under 5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DOD Directive 5105.22, January 5, 1977.

Subpart B—Uniform Procurement Instrument Identification Numbers

§ 1220.203 Uniform procurement instrument identification numbers.

§ 1220.203-1 Elements of number.

(a) The letter Y in the ninth position of the basic PII number is reserved to identify imprest fund orders posted to the Standard Automated Materiel Management System (SAMMS) or other DLA automated systems.

§ 1220.204 Supplementary procurement instrument identification numbers.

§ 1220.204-50 First delivery orders against indefinite delivery type contracts.

A delivery order number shall be established for the first order quantity by issuing a separate DD Form 1155. Where it is necessary to order an initial quantity at the time of establishing an indefinite delivery type contract such as when using the incremental purchasing system, the DD Form 1155 should be issued concurrently and be cross-referenced with the indefinite delivery type contract.

Subpart G—Assignment of Contract Administration

§ 1220.703 Retention of contract administration by the purchasing office.

§ 1220.703-50 Support administration.

If the PCO retains administration of a contractor order and a need subsequently arises to delegate supporting contract administration to a CAO, the contract or order shall be assigned for performance of all contract administration functions.

§ 1220.706 Designation of the disbursing office.

(b) All contracts assigned to a Service Plant Cognizance Representative for administration shall designate the disbursing office supporting the purchasing office as disbursing office for the contract except for contracts resulting from MIPRs, which will cite the disbursing office in accordance with DLAR 4115.3, paragraph VI A 13.

PART 1221—PROCUREMENT MANAGEMENT REPORTING SYSTEM

Subpart A—Individual Procurement Action Report (DD Form 350)

Sec.

- 1221.102 Applicability and coverage.
- 1221.103 Due date and distribution.
- 1221.106 Item 1B, (No title).
- 1221.108 Item 2, contract number.
- 1221.117 Item 10B, system or equipment code.
- 1221.119 Item 11, description of commodity or service.
- 1221.120 Item 12, coordinated procurement.
- 1221.123 Item 15, contract placement.
- 1221.125 Item 17, negotiated under 10 U.S.C. 2304(a) exception.
- 1221.126 Item 18, extent of competition in negotiation.
- 1221.130 Item 22, date of this action.
- 1221.131 Item 23, estimated completion date.

Subpart B—Monthly Procurement Summary (DD Form 1057)

1221.201 Applicability and coverage.

AUTHORITY: The provisions of this Subchapter A are issued under 5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DoD Directive 5105.22, January 5, 1977.

Subpart A—Individual procurement action report (DD Form 350)

§ 1221.102 Applicability and coverage.

(a) To assure that the procurement statistics prepared at HQ DLA, and furnished to the Office of the Secretary of Defense, correspond with the data of the reporting activities, each purchasing office shall furnish HQ DLA, ATTN: DLA-PA, within one day following the close of each month, with the first and last report number of the DD Forms 350 that were issued in the preceding month's report period, listing any exceptions to the

consecutive numbering pattern. In addition, furnish the total dollar value involved in these DD Forms 350.

(b) Each item on the DD Form 350 shall contain only one entry.

§ 1221.103 Due date and distribution.

The DLA Form 556 must be submitted so as to reach HQ DLA within 3 workdays following the end of each month. To meet this due date, the cutoff for the DLA Form 556 shall be the 25th calendar day of the month being reported on. RCS DD-I&L (M) 1014 applies to this report.

§ 1221.106 Item 1B, (No title), leave blank

§ 1221.108 Item 2, contract number.

(a) *Sub-Item A, Dept.* Enter the alphabetic characters in the contract number which denote the Department or Agency executing the contract as follows:

(1) For departments within DOD, enter—DLA(S) for Defense Logistics Agency, DA(A) for Army, (N) for Navy, (F) for Air Force, and (D) for all other Defense Agencies.

(2) For orders under contracts awarded by General Services Administration (Federal Supply Schedule contracts) enter GS(G), and for orders under contracts awarded by the Government Printing Office enter GP(P). Enter five zeros in Sub-Item B.

(3) For orders covering purchases from other Federal agencies (see ASPR 21-108(a)(iii)), enter X in parentheses. Enter five zeros in Sub-Item B.

§ 1221.117 Item 10B, system or equipment Code.

Not applicable to DLA. Leave blank.

§ 1221.119 Item 11, description of commodity or service.

In addition to or as a part of the regular item description, place in parentheses an abbreviated description which must not exceed 10 typewritten characters, including spaces but omitting punctuation marks, e.g., Pallet Aircraft, Cargo HCU-6/S (Pallet), Coal, Bituminous (Coal Bitum), Yellow Fever Vaccine (Y1 Fev Vac), Tetanus and Diphtheria Toxoids (Toxoid TD), Handbag, Women's, Brown, Calfskin (Handbag Wmn), (Fuel Oil).

If action involves more than one item, enter in Item 11 the one having the greatest dollar value. Additional items may be entered on the reverse side of the form; abbreviated descriptions are not required for these additional items.

§ 1221.120 Item 12, coordinated procurement.

Codes 3 and 6 are the only codes applicable to DLA.

§ 1221.123 Item 15, contract placement.

(f) *Code J, Military Assistance Sales.* The ASPR instruction for separate reporting where a single action is partly for Military Assistance Sales applies only when each of the individual parts exceeds \$10,000. If one or both of the parts are less than \$10,000 but the sum of both parts is more than \$10,000, the total shall be reported as one action on a single DD Form 350, and reporting based on the part of the action that involves the greatest dollar value.

§ 1221.125 Item 17, negotiated under 10 U.S.C. 2304(a) exception.

Enter code as follows: For codes 1A through 1E, enter as 01A0 through 01E0; For codes 2 through 9, enter as 0200 through 0900; For codes 10-1 through 10-9, enter as 1001 through 1009; For codes 11 through 16 and 17A and 17B, enter as 1100 through 1600; 17A0 and 17B0.

§ 1221.126 Item 18, extent of competition in negotiation.

When the exemption of ASPR 3-1204(a)(ii) applies, the contract award shall be reported as having been made on the basis of adequate price competition.

§ 1221.130 Item 22, date of this action.

Enter this following alphabetical code for the month: A-Jan; B-Feb; C-Mar; D-Apr; E-May; F-Jun; G-Jul; H-Aug; I-Sept; J-Oct; K-Nov; and L-Dec. For example: Date of this Action: 77/G/5 for 5 July 1977.

§ 1221.131 Item 23, estimated completion date.

Same as 21-130 above. For example: Estimated Completion Date: 77B for February 1977.

Subpart B—Monthly Procurement Summary (DD Form 1057)

§ 1221.201 Applicability and coverage.

Defense Personnel Support Center Defense Subsistence Regions shall submit separate DD Forms 1057 for perishable and nonperishable subsistence activity.

PART 1225—PRODUCTION SURVEILLANCE AND REPORTING

Subpart A—Production Surveillance

Sec.

1225.103 Assignment of Critically Designator by Purchasing Office.

1225.103-50 Criticality Designator "A".

Subpart B—Production Reporting

1225.202 Production Progress Reporting by Contractors.

1225.204 Special Production Progress Reports.

1225.204-50 Contract Acceleration/Status Requests.

AUTHORITY: The provisions of this Subchapter A are issued under 5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DOD Directive 5105.22, January 5, 1977.

Subpart A—Production Surveillance

§ 1225.103 Assignment of criticality designator by purchasing office.

General criteria for designator assignments are included in ASPR 25-103. The lowest Surveillance Criticality Designator consistent with Government requirements shall be assigned. The increased flexibility provided to the Defense Supply Centers (DSCs) in the assignment of Surveillance Criticality Designators is not to be misused. Misuse will create an overall degradation of the production support provided, rather than an improvement.

§ 1225.103-50 Criticality designator "A".

Criteria for Contracts/Purchase Orders in support of a Department of Defense (DOD) or Military Service Directed Critical Program.

(a) Items in direct support of the DOD Master Urgency List (MUL), DX rated contracts (BRICK-BAT 01).

(b) Items or programs designated critical by Departmental Headquarters or HQ DLA.

(c) Items in support of programs designated in writing as critical by DSC Commander.

Subpart B—Production Reporting

§ 1225.202 Production progress reporting by contractors.

The requirement for Production Progress Reports (DD Form 375) will be limited to the following and then only when circumstances make such reporting appropriate:

(a) Items required to satisfy requisitions bearing UMMIPS priority 01 through 06.

(b) Items that have been designated by the DSC Commanders as being in a critical supply position.

(c) Items on the DOD, Military Service, or DLA critical list.

(d) Items in direct support of the DOD MUL categories.

(e) Items which require Material Readiness Studies under DLAR 4140.3.

(f) Contractors on the Military Services Contractor Experience Lists.

(g) When requested by the DOD Project Manager.

§ 1225.204 Special production progress reports.

§ 1225.204-50 Contract acceleration/status requests.

As a general policy, the Directorates of Procurement and Production (D/PP) will initiate contract acceleration/status requests to contractors and DCAS activities as appropriate. However, to facilitate the handling of special emphasis and high priority items,

Centers may, at their option, establish local procedures which will permit the Directorate of Supply Operations (D/SO) to initiate contract acceleration/status requests to DCAS activities. Those Centers using this option must assure that local procedures are jointly developed by the D/PPs and D/SOs and contain the following controls and provisions:

(a) Strong prohibitions against Center D/SO personnel contacting contractors directly.

(b) Strict controls to preclude identical requests for the same item being sent by D/O and D/PP to DCAS activities.

(c) A procedure whereby information obtained by the D/SO from DCAS is fed to the D/PP for updating the active contract file.

(d) In accordance with the intent of ASPR 20-801(a), direct communications between D/SO personnel and DCAS offices shall normally be by letter or message. Under the most urgent of circumstances (UMMIPS priorities 01s thru 03s), telephone requests for acceleration/status are permitted after the D/SO determines that the D/PP is not working the same items. D/SO telephone requests for contract acceleration will be immediately followed by confirming documentation to DCAS activities.

(e) In accordance with the intent of ASPR 25-204, requests for contract status/acceleration will be kept to a minimum and specify, at a minimum, contract number, contractor, and location. In addition, such requests shall contain sufficient information to convey the urgency of the circumstances and minimum quantities needed to satisfy high priority requisitions and/or backorders. Requests for contract status/acceleration will not be initiated for convenience or for non-critical items.

PART 1250—SUPPLEMENTAL PROCEDURES

Subpart A—Sale, Loan, Gift of Property

Sec.

1250.101 Sale, loan or gift of certain property (10 U.S.C. 4506).

Subpart B—Reserved

Subpart C—Training

1250.301 Training of procurement personnel.

1250.301-1 General.

1250.301-2 Policy.

1250.301-3 Small purchase orientation course for "new" buying personnel (44 hours).

1250.302 Attendance of civilian contractor personnel at defense management courses.

1250.302-1 General.

1250.302-2 Policy.

1250.302-3 Administration.

Subpart D—Selection of Contracts to be Terminated for Convenience in Event of Unexpected Deceleration in Military Requirements

1250.401 General.

1250.402 Policy.

1250.403 Priority of termination type.

1250.404 Responsibilities.

1250.405 Complete and partial terminations.

1250.406 Procedures.

1250.406-1 Operational procedures.

Subpart E—Recovery and Utilization of Precious Metals (Silver, Gold, Platinum, Palladium) from Scrap Materials

1250.501 General.

1250.502 Policy.

1250.503 Responsibilities.

1250.504 Procedures.

Subpart F—Contract Review Checklist

1250.601 General.

1250.602 Contract review checklist.

Subpart G—The DLA Master Solicitation Program

1250.701 General.

1250.702 Scope.

1250.703 Definitions.

1250.704 Format.

1250.705 Policy.

1250.705-1 The master solicitation.

1250.705-2 The individually numbered solicitations.

1250.706 Incorporation by reference.

1250.706-1 Incorporation of ASPR provisions.

1250.706-2 Incorporation of standard Forms 32 and 33A.

1250.707 Termination for convenience clause.

1250.708 Distribution.

1250.708-1 Copies to DCAS.

1250.708-2 Copies to suppliers.

1250.708-3 Copies to GAO.

AUTHORITY: The provisions of this Subchapter A are issued under 5 U.S.C. 301; 10 U.S.C. 125, 133, 2202, 2301-2314; DOD Directive 5105.22, January 5, 1977.

Subpart A—Sale, Loan, Gift of Property

§ 1250.101 Sale, loan, or gift of certain property (10 U.S.C. 4506).

(a) The HPAs and their authorized designees are authorized to sell, give, or lend drawings, manufacturing and other information, and samples of supplies and equipment to be manufactured or furnished, to contractors and private firms which are or may likely be manufacturers or furnishers of supplies and equipment for use under approved production plans, whenever they determine that such action is necessary in the interest of national defense.

(b) Such drawings, manufacturing and other information, and samples of supplies and equipment to be manufactured or furnished shall be sold, given or loaned by appropriate written agreement, reciting the above determination (10 U.S.C. 4506).

(c) The foregoing determination and requirement for a written agreement

will not be mandatory in the case of invitations for bids and requests for proposals. Drawings, specifications and data furnished need not be returned unless otherwise directed by the contracting officer.

(1) The determination to request the return of such specifications, drawings, or any other data furnished the contracting officer should take into consideration the following factors:

(i) The current or probable future need of the Government for the items.

(ii) The residual value of such items.

(iii) Administrative and other expenses incident to handling and storage of such items.

(iv) The probable cost of reproduction of such items in event of future procurement.

(2) Classified material as a general rule will be required to be returned regardless of the criteria established above.

Subpart B—Reserved

Subpart C—Training

§ 1250.301 Training of procurement personnel.

§ 1250.301-1 General.

DOD Manual 1430.10-M-1 is very specific as to the training required for people working in the procurement career field. Every effort must be made to follow the concepts outlined in this manual. This will help assure the availability of a trained work force and will allow for normal job progression in this important function.

§ 1250.301-2 Policy.

In addition to providing adequate training at Service sponsored schools, all newly employed professional personnel in the procurement and production area (i.e., buyers) will be given a minimum of about forty-four hours of orientation in Small Purchases. All new buyers shall be required to read the ASPR Small Purchase Manual (ASPM No. 2) prior to beginning Phase I of the orientation course. See 50-301.3 for proposed course outline. This instruction should include clear guidance on the necessity for making buys at reasonable prices. This orientation course will be conducted in two phases. Phase I will be completed before any work assignments are made. Phase II will be given four to six weeks later. This will permit new employees to have a better grasp of the actual duties to be performed. In addition to the new buying personnel, any persons currently assigned to buying tasks, who have not had formal procurement training, will also be given this orientation. For these people, only Phase II may be required.

§ 1250.301-3 Small Purchase Orientation Course for "New" Buying Personnel (44 Hours).

PHASE I

Agenda	Time
1. Organization (hour).....	1
(a) DOD	
(b) DLA	
(c) DSC	
2. Ethics and standards of conduct (hour).....	1
3. Basic procurement policies/statutes (hours).....	2
(a) Delegation of authority	
(b) Contracting officers	
4. ASPR section III, part 6 (hours).....	2
(a) Competition	
(b) Purchase orders	
(c) Imprest funds	
(d) BPA's	
(e) Fast pay	
(f) Unpriced orders	
5. Standard automated materiel management system (SAMMS) (minutes).....	30
(a) General SAMMS orientation	
(b) Automated small purchase procedures, ASPS phase I (hour).....	1
(c) Award input procedures (hour).....	1
(d) SAMMS reports and output products affecting small purchase operation (hour).....	1
(e) SAMMS modification to small purchase awards (minutes).....	30
6. Local procurement forms (hours).....	4
(a) How to prepare	
(b) When to use	
(c) Records-documentation	
7. Sources of supply-general (hours).....	2
8. Soliciting and evaluating quotes (hours).....	2
9. Cost and price analysis techniques (hours).....	4
(a) Catalogs	
(b) Price reasonableness	
10. Adequacy of purchase request (hours).....	2
(a) Technical data	
(b) Priorities	
(c) Quantities required	
Phase I, Total (hours).....	24

PHASE II

Agenda	Time
1. Administration of small purchases (hours).....	2
(a) Change orders	
(b) Terminations	
2. Sources of supply (hour).....	1
(a) Federal supply schedules	
(b) Federal prison industries	
(c) Industries for blind	
3. ASPR section III, part 6 (hours).....	4
4. Cost and price analysis price reasonableness (hours).....	4
5. Orientation by technical operations (hours).....	4
(a) Technical data	
(b) Specifications	
6. Local procurement forms (hour).....	1
7. Review overall orientation (as required) (hours).....	4
Phase II, Total (hours).....	20

§ 1250.302 Attendance of civilian contractor personnel at defense management courses.

§ 1250.302-1 General.

Employees of private organizations performing on contracts with the De-

fense Logistics Agency are authorized to attend Defense Management Courses when it is certified that a valid requirement exists for the training. Such courses are contained in the Defense Management Education and Training Catalog (DOD 5010.16-C).

§ 1250.302-2 Policy.

Attendance of civilian contractor personnel at Defense Management Courses will be considered only when the HPA finds in writing that such attendance is in the best interest of the Government. The finding must demonstrate the relationship between the requested training and the successful performance of the DLA contract(s) reviewed. Also, a determination as to whether the cost of the training should be borne by the employer or the Government shall be made by the HPA. This determination will be based upon whether the course is primarily advantageous to the Government or to the contractor. Requests for quota will be processed as prescribed in DLAR 1430.10.

§ 1250.302-3 Administration.

Details related to administration of the Defense Management Education and Training Program are contained in DOD 5010.16-C.

Subpart D—Selection of Contracts to be Terminated for Convenience In Event of Unexpected Deceleration in Military Requirements

§ 1250.401 General.

(a) References

- (1) ASPR, Section 1, Part 4.
- (2) ASPR, Section VIII.
- (3) ASPR, Section XXIV.
- (4) DLAM 8110.1, Termination Manual for Contract Administration Services.
- (5) DLAM 8130.1, Contractor Inventory Management Manual for Contract Administration Services.

§ 1250.402 Policy.

Terminations for convenience will be based on individual decisions resulting from a comparison of costs for termination and excess position of items versus the need for release of obligated funds for higher priority use.

§ 1250.403 Priority of Termination Type.

A termination for default gives the Government certain rights that should be surrendered only when this is to the Government's best interest. Whenever unsatisfactory performance occurs, the possibility of terminating for default should be examined; this should be done before considering other means of ending the contract.

§ 1250.404 Responsibilities.

The decision to terminate a contract for the convenience of the Govern-

ment is the joint responsibility of the commodity manager and the PCO at the cognizant DSC. In those cases where the contract resulted from a MIPR, the decision to terminate for convenience is the responsibility of the MIPR initiator; however, the PCO upon request must inform the initiator of all elements which have any bearing on the status of the contract.

§ 1250.405 Complete and Partial Terminations.

Terminations may be complete or partial. A complete termination requires the contractor to stop all work under the contract upon receipt of the Notice of Termination or on the date specified in the Notice. A partial termination discontinues only a portion of the uncompleted work under a contract. (The part of the work that the contractor must continue to perform is called the continued portion. The part of the contract that has been completed and accepted before the effective date of the termination is called the completed portion. The terminated portion of the contract is any part that does not relate to either the completed or the continued work.)

§ 1250.406 Procedures.

Upon receipt of a request for a cut-back in contract quantities from the cognizant commodity manager, the following information will be utilized in selecting the contracts for termination:

(a) Ascertain all current contracts for items involved.

(1) Determine the undelivered portion of each contract.

(2) Consider suppliers in transit (F.O.B. destination contract) as deliveries, unless contract is delinquent and a notice to terminate for default has been sent to the contractor.

(3) Determine what deliveries, if any, are delinquent.

(4) Determine whether the delinquency is excusable or inexcusable.

(5) Contractual quantities scheduled for direct delivery to users are not subject to termination action unless specifically so designated.

(b) If delinquency is considered inexcusable, terminate for default where appropriate.

(c) Where Termination for Default is not appropriate or where additional quantities remain to be cut back after Termination for Default, proceed in the selection of contracts to be terminated for convenience.

(1) First Choice should be where contractors are agreeable to total or partial termination (voluntary or no cost settlement).

(2) Consider the following factors:

(i) Contracts involving contractors' commercial item.

(ii) Contracts awarded as rated orders [ASPR 1-307.3].

(iii) Contracts for mandatory procurement. [ASPR Section VI].

(iv) Contracts most recently awarded and those providing for longest production lead time where production has not progressed to an appreciable degree.

(v) Contracts awarded at the highest price and work down pricewise.

(vi) Partial termination of all contracts where two or more contractors are involved in lieu of total termination of a few.

(d) The dollar amount of potential settlement claims should be estimated with the assistance of DCAS. Consider:

- (1) Unit price of undelivered items.
- (2) Raw material on hand and/or on order.
- (3) Components on hand or on order.
- (4) Work in process.
- (5) Unamortized start up costs.
- (6) Percentage of completion.
- (7) Current commercial value and saleability of the item involved.
- (8) Disposal actions required taking into consideration recoupment through sales of items to be disposed.

§ 1250.406-1 Operational Procedures.

(a) The Directorate of Supply Operations or the MIPR initiator will advise Procurement and Production to cancel an item by quantities and consignee. The Directorate of Supply Operations or the MIPR initiator will be required to indicate all open purchase requests and/or contracts when requesting information upon which to base a termination decision or when requesting cancellation by item and consignee.

(b) Procurement and Production, using procedures in § 1250.406 will determine what portion of each open contract (or contracts) should be terminated.

(c) If Procurement and Production decision indicates that Supply Operations original request should be revised, decision will be coordinated with Supply Operations. The final authority for deciding whether or not to terminate, when substantial claims are involved, is the Center Commander.

(d) Upon completion of above actions, Procurement and Production will issue the Termination Notice with a copy to DCAS for termination settlement action.

Subpart E—Recovery and Utilization of Precious Metals (Silver, Gold, Platinum, Palladium) from Scrap Materials

§ 1250.501 General.

The critical shortage of precious metals from United States sources, the large amount of precious metals required in the manufacture of items for defense, and the need to reduce pro-

urement costs of material with precious metal content dictated the need for DOD to establish and monitor a program to (a) reclaim precious metals from precious metal bearing scrap and waste materials, and (b) to utilize reclaimed precious metals as Government Furnished Material (GFM) in procurement of items containing precious metals. This Section implements DOD Directive 4160.22 (as revised) and establishes DOD policy governing the management of the recovery and the use of precious metals derived from precious metals bearing scrap and waste materials generated by all elements of DOD world-wide. The DLA is assigned the responsibility for managing the overall program and has designated the Defense Property Disposal Service (DPDS), Battle Creek, Michigan, as the activity charged with the responsibility for managing the retrieval and refining of precious metals. DISC has been assigned the supply management function for precious metals.

§ 1250.502 Policy.

(a) All DLA elements generating precious metal bearing scrap and waste materials will establish and monitor an internal program to assure the economical reclamation of precious metals, consistent with the overall DOD policy of effecting maximum use of excess property to meet DOD needs.

(b) Recovered precious metals, after refinement, will be made available to DOD elements for their use as GFM to reduce new procurement costs.

§ 1250.503 Responsibilities.

Commanders of each DLA field activity are responsible for the following:

(a) Reporting precious metal bearing scrap and waste materials to the DPDS Manager for disposition and shipment to destination upon notification by the DPDS Manager.

(b) Using the refined precious metals maintained in storage by the DISC Precious Metals Inventory Manager, as GFM, whenever feasible, for contracts requiring precious metals bearing materials.

§ 1250.504 Procedures.

(a) Prior to soliciting bids for award of contracts requiring precious metals contact the DISC Precious Metals Inventory Manager, DISC-ODCA/TD, indicating the item, quantity and grade of precious metal required for the procurement. The precious metals are identified as follows:

NSN	Nomenclature	Unit of issue
9960-00-042-7768	Platinum.....	Troy ounce
9960-00-042-7733	Gold.....	do
9960-00-042-7765	Palladium.....	do

NSN	Nomenclature	Unit of issue
9960-00-106-9432	Silver.....	do
9960-01-010-2625	Rhodium.....	do
9960-01-011-1937	Iridium.....	do

If the required amount is available, forward a letter or TWX to DISC-ODCA/TD, requesting that the required quantity be reserved to cover the procurement including the estimated delivery schedule.

(b) When a contract is awarded, a MILSTRIP requisition is to be submitted to DISC-ODCA/TD. The requisition must cite full Troy ounces (partial ounces shall be rounded off to the nearest whole ounce). Exception data are to be cited. The exception data are (1) the exact "ship to" address, the DoDAAC sometimes cites post office boxes or is not always accurate; (2) the contract number on which the precious metals are committed for use, this is necessary for control and audit purposes; (3) the end item application, the NSN, part number or any other identifying data which is necessary in order that the precious metal may be recovered from the item when it reaches the end of its life cycle, and (4) a contact point with phone number at the requisitioning activity, this is required in case it is necessary to resolve any problems.

(c) Transportation charges are included in the unit price. Transportation is usually accomplished by premium method (armored van); therefore, multiple requisitions to the same destination should be consolidated whenever possible. Delivery normally will be accomplished within three weeks after receipt of the requisition by the DISC Inventory Manager.

Subpart F—Contract Review Checklist

§ 1250.601 General.

The following contract review checklist has been developed for use as a guide by DLA contracting officers and buyers in their individual contract reviews. The checklist may be modified to suit the needs of the procurement activity. A standard DLA-wide form is not prescribed in order to permit development of a local checklist.

§ 1250.602 Contract Review Checklist.

Contractor:

Contract No.: _____ Dollar value: \$ _____

Brief description of supplies or services _____

Quantity Unit Price (\$) Extension (\$)

☐ PR ☐ MIPR

Yes ☐ No ☐ N/A

1. In file?
2. Are amendments approved by appropriate authority and are they attached?

3. Adequately funded?
4. Is sole source justification adequate?
5. Option quantity included?

Procurement plan

6. Is information sufficient to support proposed method of procurement? (Advertised-Negotiated)
7. Was the procurement plan approved at a level above the buyer in accordance with DLPR 1-2100?
8. Is procurement administrative leadtime realistic?
9. If option proposed, is its use authorized/appropriate?
10. If nonpersonal services involved, was determination issued per ASPR 22-102.4?
11. If provision for progress payments contemplated, is it appropriate? (ASPR Appendix E)

Determination and findings (negotiation)

12. Proper format? (ASPR Appendix J)
13. Option quantity included/value noted?
14. Proper negotiating authority cited?
15. Any changes requiring determination and findings amendment?
16. If so, properly executed?
17. Signed and dated?

Small business/labor surplus area set-aside determination

18. Does information provided support the determination?
19. Is withdrawal/modification of the initial set-aside determination explained?

Source list

20. Is the list excessively long?
21. Should preinvitation notice have been used?
22. Is list annotated as to "no bids" received?
23. If history of sole source, are reasons given for soliciting additional firms?

Synopsis

24. Evidence in file?
25. No synopsis; justification adequate? (ASPR 1-1003.1(c))

Solicitation-IFB/RFP

26. Was solicitation issued in a timely manner?
27. Do solicitation provisions reflect PR/MIPR requirements?
28. If oral solicitation, does file contain justification for its use? (ASPR 3-501(d))
29. Bidding time/RFP response time adequate?
30. Format in accordance with ASPR 2-201 (IFB) or 3-501 (RFP)?
31. Were amendments sent to all originally solicited?
32. Were amendments properly dated?
33. Are contract clauses and provisions current/complete?

34. Was cost or pricing data (DD Form 633) requested in the initial solicitation?
35. Was DD Form 633-7 requested in initial solicitation?

36. If cost or pricing data was or was not requested, does the file include an explanation? (ASPR 3-811(a))
37. Is a disclosure statement on cost accounting practices and certification required? (ASPR 3-1203)

38. If required, did the contractor:
 - (1) Submit same?
 - (2) Execute a certificate of monetary exemption?
 - (3) Execute a certificate of previously submitted disclosure statement?

Evaluation

39. Abstract of bids/proposals: (ASPR 1-308, 2-403, 3-109)
 - (1) Signed and dated?
 - (2) All bids/offers entered properly?
 - (3) Exceptions noted?
40. Nonresponsive determinations checked with counsel; file documented as to causes?
41. Disposition of late bids/proposals adequately documented?
42. Unsuccessful bids/proposals included in the file?
43. Were unsuccessful offerors notified promptly?
44. If sole bid/offer received, file documented as to why previous suppliers failed to offer?
45. If small business determined to be nonresponsive, was certificate of competency obtained? If not, why not?
46. Packaging/transportation/freight rate data obtained and determined to be adequate?
47. If DD Form 633-7 submitted, is it complete and does it support commerciality? (Quantities comparable?)
48. If cost of pricing data (DD Form 633) submitted, was it reviewed by the cost/price analysis element?
49. Was it found to be acceptable?
50. Was field pricing support obtained (DCAA audit; DCAS pricing/technical report)?
51. If not, was waiver executed?
52. Was independent price analysis performed by the cost/price analysis element?
53. If not, was waiver executed? (PROCLTR 75-10)
54. Were auditor's recommendations accepted?
55. Was weighted guideline analysis prepared?
56. Were realistic negotiation objectives established?
57. Was prenegotiation briefing presented to appropriate authority before commencement of negotiations?
58. Does prenegotiation briefing memorandum clearly establish basis for negotiating position?
59. Does it include all of the required elements? (§ 1203.805)
60. Was basis for decision to negotiate, or decision to accept the initial offer without discussion, documented?

61. Is prenegotiation briefing memorandum signed and dated?

Negotiations

62. Were negotiations conducted with all responsible offerors within a competitive range?
63. If changes occurred in requirements, were prospective contractors notified in accordance with ASPR 3-805.4?
64. Was an amendment to the solicitation issued?
65. Were acknowledgements of changed requirements confirmed in writing by offerors?
66. If negotiation objectives were changed or exceeded, was prenegotiation briefing authority notified?
67. Were negotiations conducted on an individual cost element basis?
68. Was option quantity considered in negotiations?
69. Was rent-free use of Government property considered in the negotiations?
70. Was authority obtained for rent-free use from cognizant administrative contracting officer?
71. Was common cut-off date for negotiations established with all offerors?
72. Was certificate of current cost or pricing data obtained?
73. If so, does it reflect date of contractor's last data submission/final agreement as to price?
74. Does price negotiation memorandum format conform with § 1203.811?
75. Does the price negotiation memorandum clearly and conclusively support price reasonableness determination?
76. Is statement of same included in the price negotiation memorandum?
77. Is the price negotiation memorandum signed and dated?

Pre-award and other support data

78. Was pre-award survey conducted?
79. If no pre-award survey, was waiver executed by appropriate authority? (§ 1201.905-4)
80. Were requirements revalidated per § 1201.452-11?
81. If \$1,000,000 or more, was equal employment opportunity clearance report obtained?
82. Is Individual Procurement Action Report (DD Form 350) in file?
83. Is it in accordance with ASPR and DLPR Sections XXI?
84. If royalty payments involved, did DLA-G concur?

Contract

85. Was proper award document utilized (SF26-SF33)?
86. Does contract agree in all respects with contractor's bid/proposal?
87. If single signature document, does it reflect contractor's letter/message amendments?
88. Is contract being awarded within bid/proposal acceptance period?

89. Is arithmetic correct? (Extensions and totals)

Remarks

Subpart G—The DLA Master Solicitation Program

§ 1250.701 General.

In most purchasing offices, solicitations have been constructed to show all the requirements, terms, and conditions involved in one package, which was then sent to potential suppliers. When many thousands of purchases were made, the repetitive preparation and issuance of the millions of sheets of paper which made up the solicitations became significant not only to purchasing offices, but also to contractors who had to receive, consider, and respond to these solicitations. The Master Solicitation Program was developed in an effort to reduce the paperwork flowing between DLA buying offices and potential suppliers, to simplify solicitation and award documents, and to achieve time and dollar savings for DLA and industry. Authority for the Program is ASPR Deviation No. 73-1, granted on 16 June 1972 by the ASPR Committee. It pertains to ASPR 2-200, 3-501, and 16-101.2 and extends through 30 June 1978.

§ 1250.702 Scope.

Master solicitations may be tailored in scope according to the needs and judgments of each purchasing activity. If it is advantageous to utilize separate Master Solicitations for large and small purchases, geographic regions or major commodities, a purchasing activity may wish to use several Master Solicitation documents rather than one. The Program may be applied to any appropriate solicitation process as determined by the purchasing activity. It is applicable to both large and small purchases.

§ 1250.703 Definitions.

(a) *Master Solicitation (MS)* is a document containing provisions repetitively used in any type of solicitation. It is prepositioned with all potential sources.

(b) *Individually Numbered Solicitation (INS)* covers specific requirements of a particular solicitation. It includes only those required provisions which are not in the MS and incorporates applicable provisions of the MS by reference.

(c) Change to the MS is an alteration of, addition to, or deletion from the clauses of the MS for one particular solicitation only.

(d) *Incorporation by Reference (IBR)* is the inclusion of the clauses of one document in another by stating the proper reference numbers of those clauses in the second document.

§ 1250.704 Format.

(a) The preferred format (print size, numbering system and two column display) for MS documents is that of the SF 33A. If in-house capability does not exist and time or monetary considerations dictate a departure, this format is optional as determined by the purchasing activity.

(b) Clauses shall be segregated to conform with the Uniform Contract Format Sections. However, the most frequently used clauses shall be placed at the beginning of each section.

§ 1250.705 Policy.

§ 1250.705-1 The master solicitation.

(a) The MS shall include essential and frequently used material as determined by individual Centers on the basis of the cost effectiveness of inclusion in the MS rather than the INS. Convenience to industry and to DLA shall also be a consideration. There shall be no interim changes, revisions or amendments to the master solicitation itself. The only approved method of revising the master solicitation is by reissuing the entire master solicitation or by interim changes contained in the individually numbered solicitations. All interim changes must be entitled: "FOR THIS SOLICITATION ONLY; the following changes are hereby made to D()SC Master Solicitation, (Date)." Large numbers of interim changes will indicate a need for reissuance of the master.

(b) All new and/or revisions to Master Solicitations and copies of local implementing amplifying instructions, including revisions thereto, shall be submitted to this Headquarters, ATTN: DLA-PPR, for review and approval prior to implementation. The Headquarters review will concentrate primarily on solicitation format and the appropriateness/legality of local clauses. The correct usage of ASPR clauses is a responsibility of the field activity. In the event the new or revised MS contains a new or revised clause requiring separate review and approval pursuant to ASPR/DLPR, such clause shall be identified in the letter transmitting the MS to DLA.

(c) The master solicitation should be kept as brief as possible (typically not exceeding 25 or 30 pages). Local clauses should be combined, condensed, or eliminated wherever possible. Locally developed manuals, packing/consignment instruction, etc., should be included in the master solicitation when such documents are used repetitively.

§ 1250.705-2. The individually numbered solicitations.

The INS shall contain all information pertinent to a specific solicitation. It shall incorporate the appropriate provisions of the MS by reference and

shall be prepared in a manner which provides for award to be made without physically attaching the MS.

§ 1250.706 Incorporation by reference (IBR)

§ 1250.706-1 Incorporation of ASPR provisions.

(a) Mandatory UCF Section L, ASPR Section VII clauses shall be incorporated by reference in either the MS or the INS, as decided by each buying activity.

(b) Clauses other than mandatory UCF Section L, ASPR Section VII clauses which are not fill-in clauses shall be incorporated by reference by title, number, and date, or in full text in either the MS or the INS, according to the judgments of each Center.

(c) Fill-in clauses shall be placed in full text in either the MS or the INS at the discretion of each Center.

§ 1250.706-2 Incorporation of standard forms 32 and 33A.

Standard Forms 32 and 33A shall be incorporated by reference.

The SF 33A shall be incorporated by reference by including in Section B Uniform Contract Format a notification substantially as follows:

"Paragraph 1 of Block 9 to the SF 33 is deleted and the following is substituted therefor: Solicitation instructions and conditions, SF 33A is incorporated herein by reference".

§ 1250.707 Termination for convenience clause.

ASPR Deviation No. 74-14 with respect to ASPR 3-608.2(b)(1)(ix) permits the Termination for Convenience Clause to be included in the schedule of the purchase order at the time of issuance so that additional paperwork involved in obtaining the contractor's signature may be avoided. The clause may either be set forth verbatim or incorporated by reference.

§ 1250.708 Distribution.

§ 1250.708-1 Copies to DCAS.

An initial distribution of the appropriate MS to each DCAS component shall be made as follows:

DCASR—30 copies
DCASMA—15 copies
DCASPRO—6 copies

Additional copies shall be furnished upon request.

§ 1250.708-2 Copies to suppliers.

All potential suppliers shall be provided with copies of the appropriate MS.

§ 1250.708-3 Copies to GAO.

Copies of contracts sent to the GAO shall include a copy of the Master Solicitation.

APPENDIX E—DLA CONTRACT FINANCING REGULATIONS

Sec.

- E-001 Purpose.
E-003 Implementation.

Subpart B—Basic Policies

- E-200 Scope of Part.
E-200.50 Submission of Contractual Instruments for Audit by the U.S. General Accounting Office.
E-218 Deviations—Amendments.
E-218.50 Submission of Request for Deviations.
E-219 Interpretations.
E-220 Foreign Procurement.
E-220.50 Use of Foreign Currencies.

Subpart C—Guaranteed Loans

- E-303 Procedure on Application of a Private Financing Institution.
E-303.50 Submission of applications and Supporting Documents.
E-306 Guaranteeing Agency.
E-306.50 Account, Accounting Office, Disbursing Office.

Subpart D—Advance Payments

- E-412 Action by Contracting Officer—Approval.
E-412.50 Transmittal of Documents.
E-412.51 Accounting and Disbursing Procedures.

Subpart E—Progress Payments Based on Costs

- E-505 Unusual Progress Payments—Standards—Procedures.
E-505.50 Submission of Requests.
E-506 Accounting System and Controls.
E-506.50 Accounting and Disbursing Procedures.

Subpart F—Contract Debts—Interest—Deferred Payments

- E-001 Purpose.

This appendix outlines the methods by which the provisions of ASPR Appendix E will be applied in DLA (other than DCASRs).

- E-003 Implementation.

Changes and additions to, as well as interpretations of, this appendix will be developed within the Accounting and Finance Division, Office of the Comptroller, HQ DLA.

Subpart B—Basic Policies

- E-200 Scope of Part.
E-200.50 Submission of contractual instruments for audit by the U.S. General Accounting Office.

DLA contractual instruments required by the U.S. General Accounting Office for audit purposes must be submitted to one of the Military Service finance centers. The appropriate center for a specific DLA contractual instrument can be determined by reference to the accounting and finance (disbursing) office designated to make payment under the basic contractual instrument, e.g., if the disbursing office operates under an Army disbursing station number, the contractual instruments should be transmitted to Indianapolis. The addresses of these centers are as follows:

Army

Processing and Disposal Branch, Retained Accounts Division, Settlement Operations, Finance Center, U.S. Army, Indianapolis, Ind. 46249.

Air Force

Air Force Accounting and Finance Center, Attn: SAA, 3800 York Street, Denver, Colo. 80205.

Navy

Navy Finance Center, Administrative Services Department, Code SSP, Federal Office Building, 1240 East QM Street, Cleveland, Ohio 44199.

Marine Corps

Commandant, Marine Corps, Headquarters, Washington, D.C. 20380.

- E-218 Deviations—amendments.

- E-218.50 Submission of request for deviations.

Request for authority to deviate from the provisions of ASPR Appendix E will be submitted (in an original and four copies) to HQ DLA, Attn: DLA-CF.

- E-219 Interpretations.

Problems of interpretation and applications of the type indicated in ASPR E-219 should be transmitted to HQ DLA, Attn: DLA-PP. This office will effect any necessary coordination with the DLA Contract Financing Officer and determine whether dissemination to the other procuring activities is appropriate.

- E-220 Foreign procurement.

- E-220.50 Use of foreign currencies.

Foreign currencies owned by the United States Government shall be used, when feasible, to make payments under contracts in foreign countries. The provisions of DLAR 7000.2, Use of United States-owned Foreign Currencies for Payment of Contracts in Foreign Countries, will govern.

Subpart C—Guaranteed Loans

- E-303 Procedure on application of a private financing institution.

- E-303.50 Submission of applications and supporting documents.

Any application based on a contract which cites or will cite DLA funds will be transmitted to HQ DLA, Attn: DLA-CF. This address will be used regardless of the office responsible for administration of or payment under the contract.

- E-306 Guaranteeing agency.

- E-306.50 Account, accounting office, disbursing office.

(a) The following revolving fund account has been established on the books of the Treasury for receipts and expenditures under the DLA guaranteed loan program:

Symbol—97X4080.

Title—Defense Production Guarantees, DLA.

To assure proper processing through accounting and finance reporting channels of the Military Departments, the subhead .5149 will be added to the symbol.

(b) The single central accounting office responsible for maintaining the accounting records of the DLA's guaranteed loan program is the Office of the Comptroller (Contract Financing Office), HQ DLA.

(c) The single disbursing office which shall be responsible for taking up all collections and making all disbursements incident to DLA's guaranteed loan program is the Accounting and Finance Office, Disbursing Symbol 5016, DASC, Cameron Station, Alexandria, Va. 22314.

Subpart D—Advance Payments

- E-412 Action by contracting officer—approval.
E-412.50 Transmittal of documents.

The contracting officer's report should be forwarded in original and two copies in the format and outline indicated by ASPR E-412. Unless otherwise requested, the contracting officer should furnish the items indicated by ASPR E-412(v) and (vi); this action will normally obviate the need for the separate comments required by ASPR E-412(vii). If the contracting officer recommends disapproval (ASPR E-412.1) he should include suggestions as to alternate financing methods. The documents should be transmitted to HQ DLA, Attn: DLA-CF, if the contracts cite DLA funds; the office administering or making payments under the contracts or maintaining the allotment records to which the payment will finally be charged are not pertinent.

- E-412.51 Accounting and Disbursing Procedures.

Each of the three Military Departments employs different accounting and disbursing procedures for making and recouping advance payments. The prescribed procedures of each Department meet the requirements for advance payments and recoupments made under contracts citing DLA funds; therefore, the paying office designated in the contract and/or the allottee or suballottee, depending upon the local arrangement, should utilize the procedures outlined by the Military Department under which paying office operates.

Subpart E—Progress Payments Based on Costs

- E-505 Unusual Progress Payments—Standards—Procedures.
E-505.50 Submission of Requests.

The documents indicated in the third subparagraph ASPR E-505, if the request concerns a contract which cites DLA funds, will be submitted for coordination and approval to HQ DLA, Attn: DLA-CF. The command jurisdiction of the office administering the contract, making payments on the contract or maintaining accounting records of the allotment or suballotment which will be charged for the payment is not pertinent.

- E-506 Accounting System and Controls.

- E-506.50 Accounting and Disbursing Procedures.

Each of the three Military Departments employs different accounting and disbursing procedures for making progress payments. The prescribed procedures of each Department meet the requirements for progress payments made under contracts citing DLA funds; therefore the paying office cited in the contract and/or the allottee or suballottee should utilize the procedures outlined by the Military Department under which the paying office operates. Allottees and suballottees of DLA funds, whose allotments or suballotments are charged with progress payments, will render the same type of report to the allottee or suballottee as are required by the Military Department procedures under which the disbursing

office, which services the allottee or suballottee, operates. The "same type report" means the same format, form, content and due dates prescribed by the appropriate Military Department directive. Allottees may consolidate the reports of suballottees or transmit them as received. Reports on progress payments should be submitted in accordance with paragraph 5i, Section VII, Chapter 5, DLAM 700.1.

Subpart F—Contract Debts—Interest—Deferred Payments

Follow directions contained in DLAM 7000.1, Chapter 12, Sections I and II and Figures 12-1, 12-2, 12-4, and 12-11.

SUPPLEMENT NO. 2—CONTRACT FILE MAINTENANCE, CLOSEOUT AND DISPOSITION

Subpart A—Documentation of Contract Actions

S-2101.2 Contractor General File.

Subpart A—Documentation of Contract Actions

S-2101.2 Contractor General File.

The basic purpose of the contractor general file is to provide complete and current information on a contractor's capability or responsibility within a single reference. The file on each contractor should include financial statements and reports, scope of work he performs, personnel data, quality of his operations, and any other correspondence and reports relating to the contractor generally and considered worthy of management's attention. These files shall be maintained at one central point within the purchasing activity.

[FR Doc. 78-11865 Filed 5-2-78; 8:45 am]

[7710-12]

Title 39—Postal Service

CHAPTER I—UNITED STATES POSTAL SERVICE

PART 111—GENERAL INFORMATION ON POSTAL SERVICE

Disposition of Books and Sound Recordings Found Loose in the Mails

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rule amends postal regulations to permit the release, after a 30-day retention period, of undeliverable books and sound recordings bearing a particular trade name, company name, or other organizational identification to a publisher or distributor of such books or sound recordings who formally requests such release. Books and sound recordings found loose in the mail that cannot be traced to a particular firm or mailing or that can be traced to a firm which does not request their release will, as before, be sold at public auction. The Postal Service has made this change in the regulations because it has reason to believe that over 90 percent of all books and sound recordings found loose in the

mailstream are mailed by commercial mailers. In the opinion of the Postal Service, this change in the regulations will have the expected effects of returning books and sound recordings to their rightful owners and avoiding the present expense to the Postal Service of processing and selling this material. The rights of individual mailers to recover lost books or sound recordings will continue to be protected by the 30-day holding period, during which time the Postal Service can respond to inquiries on lost items. It should be noted that the revised rule will not apply to articles other than books and sound recordings found loose in the mails, because there is an insufficient statistical basis for making it generally applicable to other mailed merchandise at this time.

EFFECTIVE DATE: June 3, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Ed McClure, 202-245-4530.

SUPPLEMENTARY INFORMATION: On February 14, 1978, the Postal Service published for comment in the *FEDERAL REGISTER* proposed changes to Part 159 of the Postal Service Manual as described above (43 FR 6263). The proposed changes were intended to establish more practicable criteria for the release of books and sound recordings from custody of the Postal Service without adversely affecting the rights of individual mailers.

Interested persons were invited to submit written comments concerning the proposed regulations by March 16, 1978. Seventeen letters of comment were received, of which fourteen were in support and three were opposed. Eleven commenters made no specific recommendations; the remaining six commented on specific features of the proposed rules as follows:

One commenter seemed to be concerned that the Postal Service would have to exert an excessive amount of effort to determine the proper party to whom books and sound recordings should be released. Under existing rules, which are not being changed, books and sound recordings will continue to be released during a 30-day holding period to customers who identify missing material by specific quantities and titles. Books and sound recordings still on hand at the end of the holding period will, under the new rule, be released on request to publishers or distributors who are identified by means of the trade names, company names, or other organizational identification appearing on the material. Rather than an excessive effort, the Postal Service believes less effort will be required to identify the party to whom material should be released.

Another commenter generally favored the rule change but offered four separate objections to the following specific provisions:

(1) The commenter believes that books and sound recordings found loose in the mail at a BMC should continue to be held at the BMC for the 30-day retention period instead of being sent to the dead parcel branch post office for such retention. Limited space at some BMCs is the reason the change in the rule was deemed necessary. However, we believe the solution is to allow the 30-day retention of all loose articles, not merely books and sound recordings, either at the BMC or the dead parcel branch post office, with the decision to be made by the regional postmaster general of the region in which the BMC is located. The final rule so provides.

(2) The commenter requested that the Postal Service define the meaning of "certify" in proposed 159.814a(3), which states in part that "requesters must certify that they have a legal right to books and sound recordings bearing a particular trade name, company name, or other organizational identification." Another commenter, who objected to the use of the term "legal right" on the ground that it is a new, unnecessarily vague concept, suggested that the rule be changed to require requesters to certify that they are the "senders" of books and sound recordings. We have amended the rule to accommodate both these concerns. As revised, the provision will read: "Requesters must include a statement that they are a publisher or distributor of books or sound recordings bearing a particular trade name, company name, or other organizational identification." We used the terms "publisher or distributor" instead of "senders", because those terms specifically designate the kinds of commercial mailers dealt with by the regulation.

(3) The commenter stated that the concluding sentence in proposed section 159.814d, which states that "dead parcel branches will attempt to adhere to these special separation requests to the maximum extent practicable", leaves a great deal to the subjective evaluation of unit managers. We disagree. The language of the concluding sentence requires maximum effort, and would excuse nonperformance only if not practicable.

(4) The commenter took exception to the six-month waiting period in proposed 159.814j before a cancelled request may be renewed, and interpreted this as a provision to allow for "administrative inertia". The rule has nothing to do with inertia. It is intended to ensure that requesters pick up books and sound recordings at dead parcel branches as they have agreed to do, or accept shipments of such materials at the locations they have designated. Failure to do either would impose undesirable costs on the Postal Service and justify cancellation of requests and resumption of auction sales of

such material. The rule would thus protect the Postal Service from the occasional requester who is not seriously interested in participating in this program to release books and sound recordings.

A distributor of books and audio visual materials, who was otherwise in favor of the proposed rule, said that books which he mails as a distributor would not usually bear his name or trademark and would be returned to the publisher. He suggested that a provision be included in the new rule to permit customer requests for return of specific missing titles. There is no need to add a provision to this rule, since existing rules already permit customers who are able to identify missing items by specific quantities and titles to request return of such items during the 30-day holding period. To the extent that the distributor includes its name or trademark, the new procedure would authorize an additional option leading to the return after the 30-day holding period of materials bearing its trade name.

Another commenter took exception to the provision in section 159.814b, that books which did not appear to be new would not be released. He was fearful that shopworn books, which had not been sold but were being returned for credit by retail dealers, would be excluded from return under this provision. The rule, as proposed, is a practical compromise aimed at excluding books which show obvious evidence of private ownership. The presence of scuffed or badly worn covers, dogeared pages, broken spines, bookplates, names of individuals, etc. would justify exclusion from release under this rule, but a lesser, shopworn appearance would not. Since any rule adopted is still subject to subsequent revision, the Postal Service has adopted section 159.814b as written. Revision will subsequently be considered if circumstances warrant.

This same commenter requested that the practice be continued of stamping books to indicate purchase at a USPS auction. This procedure will be discontinued when the new rules are adopted. The procedure of stamping books was originally instituted as a temporary measure to serve only while alternatives to disposal through auction sales were explored. Stamping books is a costly, time-consuming procedure which should be unnecessary when those customers who are concerned with it, will, through the new procedure, be able to obtain release of books in which they have an interest.

One commenter, an industry representative of a retail bookstore trade association, who was opposed to the new rule, took specific exception to the following two features of the proposed regulation:

(1) The commenter expressed his exception to the Postal Service "claim

that 90 percent of all such (loose) books are rightfully owned by the publishing firm." We made no such claim. What we said was that "evidence shows that more than 90 percent of all books and sound recordings in the mailstream are mailed by commercial mailers * * *." Retail book stores would seem to fall in the category of commercial mailers. Accordingly, they have the same right as publishers or distributors to request that books and sound recordings bearing their particular trade name, company name, or other organizational identification be held for or sent to them.

(2) This commenter also took exception to the 30-day holding period and felt a much longer time was desirable. The 30-day period is contained in pre-existing 159.721g(1) of the Postal Service Manual and is not part of this proposed rule change. However, the 30-day holding period rule was published for comment in the *FEDERAL REGISTER* when it was originally proposed in December 1976 (41 FR 53677), as amended and corrected (41 FR 55524). A special management study recommended the 30-day holding period after finding that approximately 95 percent of loose mail inquiries are received and processed within the first 30 days. Accordingly, the 30-day rule was adopted on March 23, 1977 (42 FR 15681); we see no reason to change that determination.

As a result of comments received, we have made a number of revisions in the rules as discussed above. We also have made certain editorial changes aimed primarily at increased clarity. In view of these considerations, the Postal Service hereby adopts, as amended, the following revision of the Postal Service Manual:

PART 159—UNDELIVERABLE MAIL

1. In 159.4 revise .441 to read as follows:

159.4 Disposal of Undeliverable Mail and Unclaimed Articles

.44 Articles Found Loose in the Mail
.441 Process articles found loose in the mail in accordance with this section (159.44) at the facility designated in 159.721g(1). Before transferring loose articles to another location:

a. Make every reasonable effort to match such articles with the envelope or wrapper from which lost.

b. Loose articles which are transferred to another facility must be treated in accordance with 159.443 to remove items of no value before the transfer.

2. In 159.7 revise .721g and .724c(3) to read as follows:

159.7 Dead Mail

.721 Disposition

g. *Articles Found Loose in the Mail.* Articles found loose in the mail, which cannot be delivered or returned after the initial handling prescribed in 159.44, are treated as dead mail and processed as follows:

(1) *Location.* (a) Process loose articles found in any post office at the office where found.

(b) Process loose articles found in any BMC (bulk mail center) either at the BMC where found or at the dead parcel branch post office which serves that BMC service area (see 159.724c). The Regional Postmaster General of the region in which the BMC is located will decide whether the BMC or the dead parcel branch post office will process such articles. Loose articles which are transferred from the BMC where found to a dead parcel branch post office for processing, must be treated at the processing office as loose mail in accordance with 159.724c(3).

(2) *Holding Period.* Hold loose articles at the location where processed for 30 days after the initial handling prescribed in 159.44 and then send to the appropriate dead parcel branch designated in 159.724c at weekly intervals.

(3) *Sorting.* If the volume at any location during the 30-day holding period requires a plan of sorting to facilitate search and disposal on schedule, proceed as follows:

(a) Separate the articles into general groups, such as books, clothing, hardware, etc. Store by weeks to facilitate location and disposal.

(b) Only if the volume makes it necessary, assign a serial number to each category referred to in (a); assign a serial number to each parcel within each category; make a card or book list of the parcels, by category and parcel numbers, with a brief description of the articles.

(4) *Wrapping.* Do not wrap or box loose articles during the holding period except when necessary to keep together several articles known to be from the same parcel.

.724 Dead Letter and Dead Parcel Branches

c. Dead Parcel Branches

(3) *Separate Activities.* Each post office with a dead parcel branch must provide a separate activity for processing undeliverable and loose matter found within its own operation or loose matter designated by the regional postmaster general under 159.721g(1)(b) to be sent from a BMC for processing at the dead parcel branch post office. A physical separation must be provided between the work areas devoted to loose and undeliverable processing and to dead mail activities. Mail subject to a holding period may cross the separation into the dead parcel area only after the applicable holding period has expired.

(3) *Separate Activities.* Each post office with a dead parcel branch must provide a separate activity for processing undeliverable and loose matter found within its own operation or loose matter designated by the regional postmaster general under 159.721g(1)(b) to be sent from a BMC for processing at the dead parcel branch post office. A physical separation must be provided between the work areas devoted to loose and undeliverable processing and to

dead mail activities. Mail subject to a holding period may cross the separation into the dead parcel area only after the applicable holding period has expired. Dead matter which has been held for the appropriate holding period at other facilities must be taken directly into the dead parcel unit and immediately prepared for auction or other appropriate disposal. Activities for each of these operations must be reported separately. Form 3731, *Quarterly Report of Dead Parcel Post Branch*, must not include any volume or work hour statistics for mail matter which has not been held for the prescribed holding period.

3. In 159.8 revise .813b and add new .814 reading as follows:

159.8 Treatment in Dead Parcel Branches

.813 Other Parcels.

b. Except for books and sound recordings (see 159.814), prepare other parcels, including ordinary, insured, and COD, for disposal as soon as received if sender or addressee cannot be identified. Do not list contents.

.814 Books and Sound Recordings. Prepare books and sound recordings for disposal in accordance with 159.85, except for those that may be withheld from sale for release to a publisher or distributor under the following conditions:

a. A publisher or distributor may request, in the manner set forth below, that books and sound recordings bearing a particular trade name, company name, or other organizational identification, be released to the requester, or to the requester's authorized representative.

(1) The requester must apply in writing to the postmaster at each dead parcel branch where release of material is desired.

(2) The request must be in quadruplicate.

(3) Requesters must include a statement that they are a publisher or distributor of books or sound recordings bearing a particular trade name, company name, or other organizational identification.

(4) More than one trade name, company name, or other organizational identification may be listed in the same request.

(5) The request must specify whether the books and sound recordings are to be picked up at the dead parcel branch or whether delivery to another location is desired. If delivery to another location is desired, the address must be specified and must be one used by the requester as a return address. A requester may select only one such address for each dead parcel branch. The specified address may be changed at any time by submitting a written request to the postmaster at the dead parcel branch office.

(6) After approval, the postmaster will retain the original request and send one copy each to the requester, the Inspector in charge of the Division in which the installation is located, and the General Manager,

Special Services Division, Office of Mail Classification, U.S. Postal Service, Washington, D.C. 20260.

(7) An approved request will remain in effect until cancelled in writing by either the requester or the Postal Service (see 159.814j).

b. A book or sound recording will be sold at auction and will not be released to the requester if, although it bears an applicable trade name, company name, or other organizational identification, it does not appear to be new, or was involved in the settlement of a postal indemnity claim, or if it is known that the requester was not the mailer or addressee.

c. A request for release of books or sound recordings will be granted except where a written protest, or a conflicting request from another party, is presented to the postmaster at the dead parcel branch post office. Merchandise involved in such a dispute will be sold at auction in the normal course of business, unless written notice from both parties advising of settlement of the dispute is received prior to the prescribed sale deadline (see 159.814g). The postmaster at the dead parcel branch post office will notify both parties in writing when such disputes arise or are settled and of the consequences to the merchandise in such disputes.

d. Upon approval of a request under 159.814a, dead parcel branches will establish special separations or bins, for segregation of books and sound recordings which bear the specified trade name, company name, or other organizational identification. Such identification must consist of a readily identifiable name and be easily read. Dead parcel branches will attempt to adhere to these special separation requests to the maximum extent practicable.

e. Except where delivery to another location is desired (see 159.814a(5) and .814h), dead parcel branches will release books and sound recordings to requesters or their authorized representatives at the dead parcel branch at a time and in a manner mutually agreeable between the requester and the postmaster, consistent with the instructions in this section (159.814). Such merchandise must be picked up at least once before each auction, but may be picked up more often by mutual agreement between the postmaster and the requester.

f. When books and sound recordings are to be released at the dead parcel branch, the following procedures apply:

(1) Ten days before each dead parcel auction, or more often, if warranted by volume, the dead parcel branch will send a written notice to each requester who has specified release of such merchandise at the dead parcel branch, advising of the quantity of books and sound recordings on hand. Merchandise which is to be released at the dead parcel branch will not be listed in the sale catalog.

(2) Requesters or their representatives may pick up books and sound recordings at the dead parcel branch upon presentation of a letter from the requester authorizing the Postal Service to release such merchandise to the bearer. This letter of authorization must be executed in triplicate. Upon release of the merchandise, all copies of the

letter of authorization will be receipted in bulk by the person accepting delivery. One copy will be given out with the merchandise, one copy will be mailed directly to the requester, and the original will be retained by the dead parcel branch.

g. Books and sound recordings must be picked up at the dead parcel branch before the close of the business day immediately preceding the public display of auction sale merchandise. Failure to do so will result in cancellation of a request (see 159.814j).

h. As to books and sound recordings, which are to be released at another location under 159.814a(5), dead parcel branches will make up individual packages for shipment to the other location desired by the requester, unless hampers or other types of containers would be more advantageous.

(1) *Individual Packages.* Individual packages will be as large as possible subject to the weight and size limitations for fourth-class mail in 135.3. Each package will be prepared to comply with the requirements of 135.24, sent under a penalty label, and delivered at the destination as ordinary mail.

(2) *Containers.* Books and sound recordings from dead mail branches may be delivered in hampers, or other containers, where this means is more advantageous than making up individual packages, and adequate security against pilferage can be maintained. Postmasters at dead parcel branches and postmasters at delivery offices may coordinate suitable arrangements for containment, labeling, movement, and security of such merchandise through their respective transportation management officers.

i. Failure to accept delivery of any shipment under 159.814h will result in cancellation of a request (see 159.814j).

j. When a request is cancelled (see 159.814a(7), .814g, and .814i), the requester must be notified by the postmaster in writing. A cancelled request may not be renewed for six months after the date of cancellation. At that time, an application must be re-submitted in writing, as if it were a new request. Copies of any cancellation notice must be sent to the General Manager, Special Services Division, Office of Mail Classification, U.S. Postal Service, Washington, D.C. 20260. Merchandise on hand at the time of a cancellation will be included in the next auction.

A Post Office Services (Domestic) transmittal letter making these changes in the pages of the Postal Service Manual will be published and will be transmitted to subscribers automatically. These changes will be published in the FEDERAL REGISTER as provided in 39 CFR 111.3.

(39 U.S.C. 401(2).)

ROGER P. CRAIG,
Deputy General Counsel.

[FR Doc. 78-12018 Filed 5-2-78; 8:45 am]

[4310-84]

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT; DEPARTMENT OF THE INTERIOR

APPENDIX—PUBLIC LAND ORDERS

[A-7950; Public Land Order 5637]

ARIZONA

Prior Amendment of Executive order No. 8039; Prior Revocation of Public Land Order No. 5492; Clarification of Administration and Management Under National Wildlife Refuge System Administration Act; Change of Name to Kofa National Wildlife Refuge

AGENCY: Bureau of Land Management (Interior).

ACTION: Final rule.

SUMMARY: This public land order changes the name of the Kofa Game Range to the Kofa National Wildlife Refuge. Also, it affords notice of prior statutory action taken to revoke or revise public land orders or Executive orders, as necessary, to change the administration and management of the refuge area in accordance with Pub. L. 94-223.

EFFECTIVE DATE: May 3, 1978.

FOR FURTHER INFORMATION CONTACT:

Eldon G. Hayes, 202-343-8731.

By virtue of the authority that is vested in the Secretary of the Interior by law, including the authority that is vested in him by section 204 of the Act of October 21, 1976 (Pub. L. 94-579, 90 Stat. 2751), and in accordance with the Act of February 27, 1976 (Pub. L. 94-223, 90 Stat. 199), which amended section 4(a) of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd(a)), it is ordered as follows:

1. The Act of February 27, 1976 (Pub. L. 94-223, 90 Stat. 199), which amended Section 4(a) of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd(a)), provides that units of the National Wildlife Refuge System, including the Kofa Game Range, shall be administered by the Secretary of the Interior exclusively through the United States Fish and Wildlife Service. Accordingly, notice is hereby given that effective as of February 27, 1976 and by virtue of Pub. L. 94-223, supra:

(a) Public Land Order No. 5492 of March 21, 1975 (40 FR 14054), which provided for the transfer of all of the Secretary's delegable authority for the operation and administration of the Kofa Game Range, as described in the aforesaid orders, to the Bureau of Land Management, was revoked; and

such authority was, and is now, vested solely in the United States Fish and Wildlife Service;

(b) The operation and administration of the Kofa Game Range, including grazing, was to be administered, and is now being administered, in accordance with the National Wildlife Refuge System Administration Act, as amended, except that those holding grazing privileges, validly issued by the Bureau of Land Management and in effect on February 27, 1976, are permitted to continue such privileges under terms and conditions imposed by the Taylor Grazing Act, and implementing regulations, until those privileges expire. The renewal or initiation of grazing privileges subsequent to February 27, 1976, is in accordance with the National Wildlife Refuge System Administration Act, as amended, and implementing regulations.

(c) Executive Order No. 8039 of January 25, 1935 (4 FR 438), which established the Kofa Game Range, was modified to the extent necessary for it to conform to the provisions of (a) and (b), above.

2. The name of the Kofa Game Range, as so designated by Executive Order No. 8039 of January 25, 1939 (4 FR 438), is hereby changed to the Kofa National Wildlife Refuge.

3. This order does not affect or alter in any respect the Notice of Proposed Withdrawal, A-7950 of February 26, 1974, relating to the Kofa Game Range, as published at 39 FR 8640.

Dated: April 25, 1978.

GUY R. MARTIN,
Assistant Secretary
of the Interior.

[FR Doc. 78-12035 Filed 5-2-78; 8:45 am]

[4310-84]

[A-7951; Public Land Order 5636]

ARIZONA

Prior Amendment of Executive Order No. 8038; Cabeza Prieta National Wildlife Refuge; Clarification of Administration and Management Under National Wildlife Refuge System Administration Act

AGENCY: Bureau of Land Management (Interior).

ACTION: Final rule.

SUMMARY: This public land order affords notice of prior statutory action taken to revise Executive Order No. 8038, as necessary, to change the administration and management of the Cabeza Prieta National Wildlife Refuge in accordance with Pub. L. 94-223.

EFFECTIVE DATE: May 3, 1978.

FOR FURTHER INFORMATION CONTACT:

Eldon G. Hayes, 202-343-8731.

By virtue of the authority that is

vested in the Secretary of the Interior by law, including the authority that is vested in him by section 204 of the Act of October 21, 1976 (Pub. L. 94-579, 90 Stat. 2751), and in accordance with the Act of February 27, 1976 (Pub. L. 94-223, 90 Stat. 199), which amended section 4(a) of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd(a)), it is ordered as follows:

1. The Act of February 27, 1976 (Pub. L. 94-223, 90 Stat. 199), which amended section 4(a) of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd(a)), provides that units of the National Wildlife Refuge System, including the Cabeza Prieta Game Range, the name of which was changed to the Cabeza Prieta National Wildlife Refuge by Public Land Order No. 5493 of March 21, 1975 (40 FR 14315), as amended by Public Land Order No. 5502 of June 10, 1975 (40 FR 25593), shall be administered by the Secretary of the Interior exclusively through the United States Fish and Wildlife Service. Accordingly, notice is hereby given that effective as of February 27, 1976 and by virtue of Pub. L. 94-223, supra:

(a) The operation and administration of the Cabeza Prieta National Wildlife Refuge, including grazing, was to be administered, and is now being administered, in accordance with the National Wildlife Refuge System Administration Act, as amended, except that those holding grazing privileges, validly issued by the Bureau of Land Management and in effect on February 27, 1976, are permitted to continue such privileges under terms and conditions imposed by the Taylor Grazing Act, and implementing regulations, until those privileges expire. The renewal or initiation of grazing privileges subsequent to February 27, 1976, is in accordance with the National Wildlife Refuge System Administration Act, as amended, and implementing regulations.

(b) Executive Order No. 8038 of January 25, 1939 (4 FR 437), which established the Cabeza Prieta National Wildlife Refuge as the Cabeza Prieta Game Range, was modified to the extent necessary for it to conform to the provisions of (a), above.

2. This order does not affect or alter in any respect the Notice of Proposed Withdrawal, A-7951 of February 26, 1974, relating to the Cabeza Prieta National Wildlife Refuge, as published at 39 FR 8640.

Dated: April 25, 1978.

GUY R. MARTIN,
Assistant Secretary
of the Interior.

[FR Doc. 78-12036 Filed 5-2-78; 8:45 am]

[4310-84]

[M-30912; Public Land Order 56351]

MONTANA

Prior Amendment of Executive Order No. 7509; Prior Revocation of Public Land Order No. 5498; Change of Name to Charles M. Russell National Wildlife Refuge; Clarification of Administration and Management Under National Wildlife Refuge System Administration Act

AGENCY: Bureau of Land Management (Interior).

ACTION: Final rule.

SUMMARY: This public land order changes the name of the Charles M. Russell National Wildlife Range to the Charles M. Russell National Wildlife Refuge. Also, it affords notice of prior statutory action taken to revoke or revise public land orders or Executive orders, as necessary, to change the administration and management of the refuge area in accordance with Pub. L. 94-223.

EFFECTIVE DATE: May 3, 1978.

FOR FURTHER INFORMATION CONTACT:

Eldon G. Hayes, 202-343-8731.

By virtue of the authority that is vested in the Secretary of the Interior by law, including the authority vested in him by section 204 of the Act of October 21, 1976 (Pub. L. 94-579, 90 Stat. 2751), and in accordance with the Act of February 27, 1976 (Pub. L. 94-223, 90 Stat. 199), which amended section 4(a) of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd(a)), it is ordered as follows:

1. The Act of February 27, 1976 (Pub. L. 94-223, 90 Stat. 199), which amended section 4(a) of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd(a)), provides that units of the National Wildlife Refuge System, including the Fort Peck Game Range, the name of which was changed to the Charles M. Russell National Wildlife Range by Public Land Order No. 2951 of February 25, 1963 (28 FR 1871), shall be administered by the Secretary of the Interior exclusively through the United States Fish and Wildlife Service. Accordingly, notice is hereby given that effective as of February 27, 1976 and by virtue of Pub. L. 94-223, supra:

(a) Public Land Order No. 5498 of April 25, 1975 (40 FR 18996), as amended by Public Land Order No. 5500 of May 23, 1975 (40 FR 23472), which provided for the transfer of all of the Secretary's delegable authority for the operation and administration

of Charles M. Russell National Wildlife Range, as described in the aforesaid orders, to the Bureau of Land Management, was revoked; and such authority was, and is now, vested solely in the United States Fish and Wildlife Service;

(b) The operation and administration of the Charles M. Russell National Wildlife Range, including grazing, was to be administered, and is now being administered, in accordance with the National Wildlife Refuge System Administration Act, as amended, except that those holding grazing privileges, validly issued by the Bureau of Land Management and in effect on February 27, 1976, are permitted to continue such privileges under terms and conditions imposed by the Taylor Grazing Act, and implementing regulations, until those privileges expire. The renewal or initiation of grazing privileges subsequent to February 27, 1976, is in accordance with the National Wildlife Refuge System Administration Act, as amended, and implementing regulations.

(c) Executive Order No. 7509 of December 11, 1936 (1 FR 2149), which established the Charles M. Russell National Wildlife Range as the Fort Peck Game Range, was modified to the extent necessary for it to conform to the provisions of (a) and (b), above.

2. The name of the Charles M. Russell National Wildlife Range, as so designated by Public Land Order No. 2951 of February 25, 1963 (28 FR 1871), is hereby changed to the Charles M. Russell National Wildlife Refuge.

3. This order does not affect or alter in any respect the Notice of Proposed Withdrawal, M-39021 of March 4, 1975, relating to the Charles M. Russell National Wildlife Range, as published at 40 FR 11365.

Dated: April 25, 1978.

GUY R. MARTIN,
Assistant Secretary
of the Interior.

[FR Doc. 78-12034 Filed 5-2-78; 8:45 am]

[4310-84]

[Nev. 051742; Public Land Order 56341]

NEVADA

Prior Amendment of Executive Order No. 7522; Prior Revocation of Public Land Order No. 5497; Consolidation of Charles Sheldon Antelope Range and Charles Sheldon Wildlife Refuge; Change of Name to Sheldon National Wildlife Refuge; Clarification of Administration and Management Under National Wildlife Refuge System Administration Act

AGENCY: Bureau of Land Management (Interior).

ACTION: Final rule.

SUMMARY: This public land order changes the names of the Charles Sheldon Antelope Range and the Charles Sheldon Wildlife Refuge and combines them as the Sheldon National Wildlife Refuge. Also, it affords notice of prior statutory action taken to revoke or revise public land orders or Executive orders, as necessary, to change the administration and management of the area in accordance with Pub. L. 94-223.

EFFECTIVE DATE: May 3, 1978.

FOR FURTHER INFORMATION CONTACT:

Eldon G. Hayes, 202-343-7831.

By virtue of the authority that is vested in the Secretary of the Interior by law, including the authority that is vested in him by section 204 of the Act of October 21, 1976 (Pub. L. 94-579, 90 Stat. 2751), and in accordance with the Act of February 27, 1976 (Pub. L. 94-223, 90 Stat. 199), which amended section 4(a) of the National Wildlife Refuge Administration Act of 1966 (16 U.S.C. 668dd(a)), it is ordered as follows:

1. The Act of February 27, 1976 (Pub. L. 94-223, 90 Stat. 199), which amended section 4(a) of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd(a)), provides that units of the National Wildlife Refuge System, including the Charles Sheldon Antelope Range, shall be administered by the Secretary of the Interior exclusively through the United States Fish and Wildlife Service. Accordingly, notice is hereby given that effective as of February 27, 1976 and by virtue of Pub. L. 94-223, supra:

(a) Public Land Order No. 5497 of April 25, 1975 (40 FR 18997), as amended by Public Land Order 5508 of June 23, 1975 (40 FR 27659), which provided for the transfer of all the Secretary's delegated authority for the operation and administration of the Charles Sheldon Antelope Range, as described in the aforesaid orders, to the Bureau of Land Management, was revoked; and such authority was, and is now, vested solely in the United States Fish and Wildlife Service;

(b) The operation and administration of the Charles Sheldon Antelope Range, including grazing, was to be administered, and is now being administered, in accordance with the National Wildlife Refuge System Administration Act, as amended, except that, those holding grazing privileges validly issued by the Bureau of Land Management and in effect on February 27, 1976, are permitted to continue such privileges under terms and conditions imposed by the Taylor Grazing Act, and implementing regulations, until those privileges expire. The renewal or

initiation of grazing privileges subsequent to February 27, 1976, is in accordance with the National Wildlife Refuge System Administration Act, as amended, and implementing regulations.

(c) Executive Order No. 7522 of December 21, 1936 (1 FR 2184), which established the Charles Sheldon Antelope Range, was modified to the extent necessary for it to conform to the provisions of (a) and (b), above.

2. For increased administrative efficiency, the lands and interests in land comprising the Charles Sheldon Wildlife Refuge, as established by Executive Order No. 5540, of January 26, 1931, and the adjoining Charles Sheldon Antelope Range, as established by Executive Order No. 7522 of December 21, 1936, are hereby consolidated into one administrative unit. Insofar as it combines these two units of the National Wildlife Refuge System, this order is not intended to alter or modify in any respect either of the aforementioned Executive Orders. As consolidated, the Charles Sheldon Wildlife Refuge, the name of which was so designated by Executive Order No. 5540, and the Charles Sheldon Antelope Range, the name of which was so designated by Executive Order No. 7522, shall hereafter be designated and known as the Sheldon National Wildlife Refuge.

3. This order does not affect or alter in any respect the Notice of Proposed Withdrawal, Nev-051742, relating to the Charles Sheldon Antelope Range, as published at 40 FR 8368.

APRIL 25, 1978.

GUY R. MARTIN,
Assistant Secretary
of the Interior.

[FR Doc. 78-12033 Filed 5-2-78; 8:45 am]

[4910-22]

Title 49—Transportation

CHAPTER III—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER B—FEDERAL MOTOR CARRIER SAFETY REGULATIONS

[Amendment No. 77-4]

PART 386—RULES OF PRACTICE FOR MOTOR CARRIER SAFETY PROCEEDINGS

Service of Responses to Claims; Amendment

AGENCY: Federal Highway Administration, DOT.

ACTION: Amendment to final rule.

SUMMARY: On October 4, 1977, the Federal Highway Administration

issued certain amendments to the rules of practice. Among the changes was a requirement that replies in civil forfeiture cases be served on certain named persons. The service specified should only be required in proceedings under the Hazardous Materials Transportation Act because these are the only civil forfeiture cases that are assigned docket numbers and go to hearing. This amendment corrects the rules of practice by eliminating the service requirements for civil forfeiture claims not processed under the Hazardous Materials Transportation Act.

EFFECTIVE DATE: May 3, 1978.

FOR FURTHER INFORMATION CONTACT:

Gerald M. Tierney, Office of the Chief Counsel (HCC-20), 202-426-0346, Federal Highway Administration, 400 Seventh Street SW., Washington, D.C. 20590. Office hours are 7:45 a.m. to 4:15 p.m. e.t., Monday-Friday.

Therefore, 49 CFR 386.13(b) is amended to read as follows:

§ 386.13 Petitions to review, replies.

* * *

(b) * * *

(iii) In proceedings under the Hazardous Materials Transportation Act, certification that the reply has been served in accordance with § 386.38.

* * *

(49 U.S.C. 304; Pub. L. 93-633, 88 Stat. 2156; 49 U.S.C. 1801, et seq.; 49 CFR 1.48, 301.60.)

Issued this 25th day of April 1978, in Washington, D.C.

ROBERT A. KAYE,
Director, Bureau of
Motor Carrier Safety.

[FR Doc. 78-11995 Filed 5-2-78; 8:45 am]

[7035-01]

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Amendment No. 3 to Service Order No. 1262]

PART 1033—CAR SERVICE

North Stratford Railroad Corp. Authorized To Operate Over Certain Tracks Owned by the State of New Hampshire

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order (Amendment No. 3 to Service Order No. 1262).

SUMMARY: Service Order No. 1262 authorizes the North Stratford Railroad Corp. to operate a line of railroad between North Stratford, N.H., and Beecher Falls, Vt., owned by the State of New Hampshire. Resumption of Operation over this line restores rail service to shippers affected by its abandonment by the Maine Central, its former owner. Amendment No. 3 to Service Order No. 1262 extends for six months the emergency authority granted to the North Stratford Railroad for operation to this line.

DATES: Effective 11:59 p.m., April 30, 1978. Expires 11:59 p.m., October 31, 1978.

FOR FURTHER INFORMATION CONTACT:

C. C. Robinson, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, telephone 202-275-7840, telex 89-2742.

SUPPLEMENTARY INFORMATION: This amendment is printed in full below.

At a Session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 27th day of April, 1978.

Upon further consideration of Service Order No. 1262 (42 FR 16780, 43637, and 57317), and good cause appearing therefor:

It is ordered, That:

Service Order No. 1262 be, and it is hereby, amended by substituting the following paragraph (f) for paragraph (f) thereof:

§ 1033.1262 Service Order No. 1262.

(a) North Stratford Railroad Corp., authorized to operate over certain tracks owned by the State of New Hampshire * * *

* * *

(f) Expiration date. The provisions of this order shall expire at 11:59 p.m., October 31, 1978, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., April 30, 1978.

(49 U.S.C. 1(10-17).)

It is further ordered, That a copy of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this amendment be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Wash-

ington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-12071 Filed 5-2-78; 8:45 am]

[7035-01]

[Amendment No. 1 to Service Order No. 1296]

PART 1033—CAR SERVICE

Substitution of Refrigerator Cars for Boxcars

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order (Amendment No. 1 to Service Order No. 1296).

SUMMARY: There is a substantial shortage of boxcars on the Atchison, Topeka and Santa Fe Railway for shipments of cotton. The ATSF has an available supply of certain refrigerator cars that may be substituted for this traffic at the ratio of two refrigerator cars for each boxcar. Service Order No. 1296 authorizes ATSF, with consent of the shipper, to substitute two refrigerator cars for each boxcar ordered for shipments of cotton from any station on ATSF in Texas or New Mexico and destined to any other station on ATSF. Amendment No. 1 extends to the order an additional three months.

DATES: Effective 11:59 p.m., April 30, 1978. Expires 11:59 p.m., July 31, 1978.

FOR FURTHER INFORMATION CONTACT:

C.C. Robinson, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, telephone 202-275-7840, telex 89-2742.

SUPPLEMENTARY INFORMATION: The Amendment is printed in full below.

At a Session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 27th day of April, 1978.

Upon further consideration of Service Order No. 1296 (43 F.R. 3125), and good cause appearing therefor:

It is ordered, That:

Service Order No. 1296 is hereby amended by substituting the following paragraph (e) for paragraph (e) thereof:

§ 1033.1296 Service Order No. 1296

(a) Substitution of refrigerator cars for boxcars * * *

* * *

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., July 31, 1978, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., April 30, 1978.

(49 U.S.C. 1(10-17).)

It is further ordered, That a copy of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this amendment be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-12072 Filed 5-2-78; 8:45 am]

[7035-01]

[Amendment No. 2 to Revised Service Order No. 1301]

PART 1033—CAR SERVICE

Distribution of Grain Cars

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order (Amendment No. 2 Revised Service Order No. 1301).

SUMMARY: There are serious shortages of 40-foot, narrow-door plain boxcars and of covered hoppers on the lines of the Burlington Northern and of the Chicago & North Western. Revised Service Order No. 1301 requires return of narrow-door, 40-foot, plain boxcars and of covered hoppers owned by these two railroads. Loading to stations on the lines of the Car owners is permitted. Amendment No. 2 extends Revised Order No. 1301 for an additional month.

DATES: Effective 11:59 p.m., April 30, 1978. Expires 11:59 p.m., June 30, 1978.

FOR FURTHER INFORMATION CONTACT:

C. C. Robinson, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, telephone 202-275-7840, telex 89-2742.

SUPPLEMENTARY INFORMATION: The amendment is printed in full below.

At a Session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 27th day of April 1978.

Upon further consideration of Revised Service Order No. 1301 (43 FR 12326 and 14475), and good cause appearing therefor:

It is ordered, That:

Revised Service Order No. 1301 be, and it is hereby, amended by substituting the following paragraph (e) for paragraph (e) thereof:

§ 1033.130 Service Order No. 130.

(a) Distribution of grain cars * * *

* * *

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., June 30, 1978, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., April 30, 1978.

(49 U.S.C. 1(10-17).)

It is further ordered, That a copy of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this amendment be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-12070 Filed 5-2-78; 8:45 am]

[7035-01]

[Amendment No. 1 to Corrected Service Order No. 1304]

PART 1033—CAR SERVICE

Distribution of Covered Hopper Cars

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order (Amendment No. 1 to Corrected Service Order No. 1304).

SUMMARY: There is a shortage of jumbo covered hopper cars for transporting shipments of grain. A large number of these cars have been placed in unit-train service. Corrected Service Order No. 1304 provides that no common carrier by railroad shall

permit the use in unit-grain train service of more than twenty percent of its ownership of jumbo covered hopper cars. Amendment No. 1 extends Corrected Service Order No. 1304 for two months.

DATES: Effective 11:59 p.m., April 30, 1978. Expires 11:59 p.m., June 30, 1978.

FOR FURTHER INFORMATION CONTACT:

C. C. Robinson, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, telephone 202-275-7840, telex 89-2742.

SUPPLEMENTARY INFORMATION: The Amendment is printed in full below.

At a Session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 27th day of April 1978.

Upon further consideration of Corrected Service Order No. 1304 (43 F.R. 9281), and good cause appearing therefor:

It is ordered, That:

Corrected Service Order No. 1304 be, and it is hereby, amended by substituting the following paragraph (f) for paragraph (f) thereof:

§ 1033.1304 Service Order No. 1304.

(a) *Distribution of covered hopper cars* * * *

* * *

(f) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., June 30, 1978, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., April 30, 1978.

(49 U.S.C. 1(10-17).)

It is further ordered, That a copy of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this amendment be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-12066 Filed 5-2-78; 8:45 am]

[7035-01]

[Amendment No. 1 to Revised Service Order No. 1308]

PART 1033—CAR SERVICE

Distribution of Covered Hopper Cars

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order (Amendment No. 1 to Revised Service Order No. 1308).

SUMMARY: The Union Pacific is unable to furnish individual shippers with lots of 25 or 50 jumbo covered hoppers cars for three consecutive shipments of grain from Kansas and Nebraska origins to destinations on the West Coast. Revised Service Order No. 1308 waives the three-consecutive-trip provision of the applicable tariff, enabling the Union Pacific to make a more equitable distribution of its supply of covered hopper cars among all potential users of these cars. Amendment No. 1 extends the order an additional two months.

DATES: Effective 11:59 p.m., April 30, 1978. Expires 11:59 p.m., June 30, 1978.

FOR FURTHER INFORMATION CONTACT:

C. C. Robinson, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, telephone 202-275-7840, telex 89-2742.

SUPPLEMENTARY INFORMATION: The Amendment is printed in full below.

At a Session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 27th day of April 1978.

Upon further consideration of Revised Service Order No. 1308 (43 FR 12693), and good cause appearing therefor:

It is ordered, That:

Revised Service Order No. 1308 is hereby amended by substituting the following paragraph (e) for paragraph (e) thereof:

§ 1033.1308 Service Order No. 1308.

(a) *Distribution of covered hopper cars.*

* * *

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., June 30, 1978, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., April 30, 1978.

(49 U.S.C. 1(10-17).)

It is further ordered, That a copy of this amendment shall be served upon

the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this amendment be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-12069 Filed 5-2-78; 8:45 am]

[7035-01]

[Amendment No. 1 to Service Order No. 1314]

PART 1033—CAR SERVICE

**St. Louis-San Francisco Railway Co.
Authorized to Transport Shipments
of Soybean Meal of Less Than
2,000 Tons**

AGENCY: Interstate Commerce Commission.

ACTION: Emergency order (amendment No. 1 to service order No. 1314).

SUMMARY: Because of severe shortages of freight cars the St. Louis-San Francisco Railway is unable to furnish sufficient cars at one time to transport minimum weights of 2,000 tons of soybean meal between origins and destinations named in item 7420 series of Southern Ports Foreign Freight Committee Freight Tariff 1016-P, ICC No. 237. Service Order No. 1314 authorizes the SLSF to transport partial shipments of 2,000 tons of soybean meal between origins on its line and Gulf ports listed in item 7420 of that tariff. Amendment No. 1 to service order No. 1314 extends this service order for 2 months.

DATES: Effective 11:59 p.m. April 30, 1978. Expires 11:59 p.m., June 30, 1978.

FOR FURTHER INFORMATION CONTACT:

C. C. Robinson, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, telephone 202-275-7840, telex 89-2742.

SUPPLEMENTARY INFORMATION: The amendment is printed in full below.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 27th day of April 1978.

Upon further consideration of service order No. 1314 (43 FR 14474), and good cause appearing therefor:

It is ordered, That: Service order No. 1314 be, and it is hereby, amended by substituting the following paragraph (g) for paragraph (g) thereof:

§ 1033.1314 Service order No. 1314.

(a) *St. Louis-San Francisco Railway Co. authorized to transport shipments of soybean meal of less than 2000 tons.* * * *

(g) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., June 30, 1978, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date: This amendment shall become effective at 11:59 p.m., April 30, 1978.

(49 U.S.C. 1(10-17).)

It is further ordered, That a copy of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this amendment be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel Burns, Robert S. Turkington, and John R. Michael.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-12068 Filed 5-2-78; 8:45 am]

[7035-01]

[Revised Service Order No. 1315]

PART 1033—CAR SERVICE

Demurrage and Free Time on Freight Cars

AGENCY: Interstate Commerce Commission.

ACTION: Emergency order (revised service order No. 1315).

SUMMARY: Because of a severe shortage of freight cars it is necessary to reduce the time used by shippers and receivers to load and unload freight cars. Revised service order No. 1315 increases the penalties for detention of freight cars by shippers and receivers beyond the free time periods published in the applicable tariffs. The order applies to boxcars, hopper cars, gondola cars, flat cars, and covered hopper cars.

DATES: Effective 7 a.m., May 1, 1978. Expires 6:59 a.m., June 1, 1978.

FOR FURTHER INFORMATION CONTACT:

C. C. Robinson, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, telephone 202-275-7840, telex 89-2742.

SUPPLEMENTARY INFORMATION:

The order is printed in full below.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 28th day of April 1978.

An acute shortage of certain types of freight cars exists throughout the country. Certain carriers are unable to furnish adequate supplies of such freight cars to shippers located on their lines. These shortages of freight cars are impeding the movement of many commodities. Many freight cars are held by shippers for excessive periods awaiting loading, unloading, or disposition instructions immobilizing large numbers of freight cars needed by shippers for the transportation of other freight. Existing demurrage and detention rules, regulations, and practices of the railroads are ineffective to control such use of freight cars. It is, therefore, the opinion of the Commission that an emergency exists requiring immediate action to promote car service in the interest of the public and the commerce of the people. Accordingly, we find that notice and public procedure are impracticable and contrary to the public interest, and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered, That:

§ 1033.1315 Service Order No. 1315.

(a) *Demurrage and free time on freight cars* * * * Each common carrier by railroad subject to the Interstate Commerce Act shall observe, enforce, and obey the following rules, regulations, and practices with respect to its car service:

(i) *Application.* (i) The provisions of this order shall apply to intrastate, interstate, and foreign commerce.

(ii) This order shall apply to all freight cars which are listed in the official railway equipment register, ICC R.E.R. No. 407, issued by W. J. Trezise, or successive issues thereof, as having one of the mechanical designations shown on pages 1167-1169 inclusive, under the following headings:

"Class 'X'—Box Car Type," except *** mechanical designation 'XLI' and 'XT'
"Class 'G'—Gondola Car Type."
"Class 'H'—Hopper Car Type."
"Class 'L'—Special Car Type" mechanical designation 'LO,' covered hopper, only.

*** Mechanical designation 'XLI' and 'XT' eliminated.

* "Class 'H'—Hopper Car Type" added..

(iii) This order shall apply to all detention of freight cars subject to freight car demurrage or detention rules which occurs on or after the effective date of this order and which may have been shipped, placed or constructively placed prior to that date.

(iv) *Exception.* # This order shall not apply to cars while such cars are subject to section 1900, items 1900-1950, inclusive, or to section 2000, items 2000-2005, inclusive, of general car demurrage tariff 4-K, ICC H-74, issued by D. M. Rogers, supplements thereto or reissues thereof.

(v) *Exception.* This order shall not apply to cars held at or outside of ocean, Great Lakes, or river ports, for loading or unloading with freight requiring transfer between rail and water carriers.

(vi) *Exception.* This order shall not apply to freight cars of Mexican ownership while held by or for shippers at Mexican border crossings, viz:

Brownsville, Tex.
Laredo, Tex.
Eagle Pass, Tex.
Presidio, Tex.
El Paso, Tex.
Douglas, Ariz.
Naco, Ariz.
Nogales, Ariz.
Calexico, Calif.

(vii) *Exception.* # This order shall not apply to cars subject to items 710, 720, 725, 730, 740, 750, 755, 760, or 765 of general car demurrage tariff 4-K, ICC H-74, issued by D. M. Rogers, supplements thereto or reissue thereof.

(viii) *Exception.* The provisions of section 1400, items 1400-1440, inclusive, of general car demurrage tariff 4-K, ICC H-74, issued by D. M. Rogers, supplements thereto or reissues thereof, or similar provisions of other applicable demurrage, detention, or storage tariffs shall govern the adjustment, cancellation, or refund of demurrage assessed as a result of the causes described in such rules.

(ix) *Exception.* Exceptions to this order may be authorized to carriers by the Railroad Service Board. Requests for exceptions must be submitted in writing to Chairman, Railroad Service Board, Interstate Commerce Commission, Washington, D.C. 20423. Each such request must specifically identify the type of cars for which an exception is desired and must clearly state the reasons why such cars cannot be utilized in other services.

(x) The terms "loading," "unloading," "constructive placement," and "forwarding directions" as defined in general car demurrage reissues thereof, shall apply to cars subject to this order.

(xi) The term "holidays" means holidays as listed in item 525 of general car demurrage tariff 4-K, ICC H-74,

#Change in wording.

issued by D. M. Rogers, supplements thereto or reissues thereof.

(2) *Free time.* (i) Not more than a total of 48 hours' free time, computed in accordance with the provisions of the applicable tariffs naming demurrage or detention rules and charges, shall be allowed for the complete unloading of each car.

(ii) Not more than a total of 24 hours' free time, computed in accordance with the applicable tariffs naming demurrage or detention rules and charges, shall be allowed for loading or for any purpose other than complete unloading.

(iii) If the maximum free time authorized in applicable tariffs is less than the periods described in paragraphs (i) or (ii) of this section, the free-time periods, if any, provided in such tariffs shall apply.

(3) *Demurrage, detention, or storage charges—Cars not subject to average demurrage basis.* (i) After the expiration of the free-time period described in Part (2) of this order, or without free-time allowance when none is provided, demurrage charges shall be assessed at the following rates, until car is released:

\$10 per car per day, or fraction of a day, for each of the first 2 days.
\$20 per car per day, or fraction of a day, for each of the next 2 days.
\$30 per car per day, or fraction of a day, for each of the next 2 days.
\$50 per car per day, or fraction of a day, for each subsequent day.

(ii) Except as provided in item 1225, general car demurrage tariff 4-K, ICC H-74, the applicable demurrage charges provided herein will accrue on all Saturdays, Sundays, and holidays subsequent to the free time, or without free time when none is provided, including a Saturday, Sunday, or holiday immediately following the day on which the last day of free time begins, provided such last day of free time begins to run at or before 7 a.m., or expires at or before 11:59 p.m., of the day immediately prior to the Saturday, Sunday, or holiday.

(iii) If the demurrage rates published in applicable tariffs is greater than the demurrage rates named in paragraph (i) of this section, the rates provided in such tariffs shall apply.

(4) *Cars subject to average demurrage basis.* (i) One credit will be allowed for each car released before the expiration of the first twenty-four (24) hours of free time. After the expiration of the free time (or the adjusted free time if provided in applicable tariffs), one debit per car per day, or fraction of a day, will be charged for each of the first 2 days. In no case shall more than one credit be allowed on any one car, and in no case shall more than four credits be applied in cancellation of debits accruing on any one car. When a car has accrued two

debts, a charge of \$20 per car per day, or fraction of a day, will be made for each of the next 2 days; \$30 per car per day, or fraction of a day, for each of the next 2 days; and \$50 per car per day, or fraction of a day, will be made for all subsequent detention. In computing time under this rule, all Saturdays, Sundays, and holidays will be counted after the free time, including a Saturday, Sunday, or holiday immediately following the day on which the last day of free time begins.

(ii) Credits earned on cars held for loading shall not be used in offsetting debits accruing on cars held for unloading, nor shall credits earned on cars held for unloading be used in offsetting debits accruing on cars held for loading.

(iii) An average agreement may not include cars held for:

(a) Purposes other than loading and unloading.

(b) Loading or unloading in intra-plant switching service.

(iv) Credits cannot be earned by private cars subject to section 700, item 765, of general car demurrage tariff 4-K, ICC H-74, issued by D. M. Rogers, supplements thereto or reissues thereof, or subject to similar rules in other tariffs, but debits charged on such cars while under constructive placement may be offset by credits earned on other cars.

(v) At end of the calendar month the total number of applicable credits will be deducted from the total number of debits at the ratio of two credits for one debit, and \$10 per debit will be charged for the remainder (see note). If the total number of debits are offset by credits through deduction at the above ratio of two credits for one debit, no charge will be made for the detention of the cars except as otherwise provided herein for detention beyond the second debit day, and no payment will be made by the railroad on account of such excess of credits; nor shall the credits in excess of the debits of any 1 month be considered in computing the average detention for another month.

NOTE.—For the purpose of applying part (v) of this paragraph, when an odd number of credits is earned, one of such credits will be disregarded in the computation.

(vi) Credits earned on cars subject to this order shall not be used in offsetting debits accruing on cars not subject to this order; nor shall debits accruing on cars subject to this order be offset by credits earned on cars not subject to this order.

(5) Existing tariff rules requiring the placement or release, as a unit, of all cars in a multiple-car shipment shall remain in effect.

(6) The demurrage, detention, or storage rates provided herein shall su-

persede all published storage charges expressed in cents per hundredweight, per bushel, or other unit of measure, for all freight held in cars in excess of the free-time periods provided in paragraph (2) herein.

(7) If the demurrage, detention, or storage rates authorized in the applicable tariffs are greater than those described herein, such higher rates shall apply.

(8) *Notices of arrival, constructive placement, etc.* (i) Existing tariff provisions defining constructive placement and establishing the requirements for the placement, the giving of arrival or constructive placement notice of freight destined for unloading or transshipment, shall apply.

(ii) If no such rules with respect to arrival, or regarding constructive placement are published in the applicable tariffs, the rules published in general car demurrage tariff 4-K, ICC H-74, issued by D. M. Rogers, supplements thereto or reissues thereof, shall apply.

(b) *Rules and regulations suspended.* The operation of all rules and regulations, including rates, rules and free-time periods granted by authority of Part 1, section 22 of the Interstate Commerce Act, insofar as they conflict with the provisions of this order, is hereby suspended.

(c) *Notification of shipper required.* (1) Carriers shall send or deliver a written notice to shippers or consignees of the requirements of this order at or prior to the time of actual or constructive placement of cars for loading or unloading or at the time notice of arrival or of constructive placement is given. On cars held for instructions from the shipper or qualified owner of the freight, such notices must accompany or precede the arrival notice.

(2) If a notice described in paragraph (1) of this section has been given to a shipper or receiver at origin, destination, or hold point, no further notices of the requirements of this order need be given.

(3) Carriers are required to maintain a copy of all notices of the requirements of this order sent to shippers, receivers, or qualified owners of freight, at the station or point from which sent.

(4) Failure of a carrier to send and preserve copies of the notices required by paragraph (1) of this section shall not be deemed as nullifying the requirements of sections (a) and (b) of this order.

(d) *Effective date.* This order shall become effective at 7 a.m., May 1, 1978.

(e) *Expiration date.* This order shall expire at 6:59 a.m., June 1, 1978, unless otherwise modified, changed, or suspended by order of this Commission.

(49 U.S.C. 1(10-17).)

It is further ordered, That a copy of this order and direction shall be

#Change in wording.

served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this order be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington, and John R. Michael.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-12067 Filed 5-2-78; 8:45 am]

[7035-01]

[Amendment No. 1 to Revised Service Order No. 1322]

PART 1033—CAR SERVICE

Distribution of Grain Cars

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order (Amendment No. 1 to Service Order No. 1322).

SUMMARY: Because of a shortage of covered hopper cars for loading grain emergency action to increase the supply of covered hopper cars used for transporting grain is required. Revised Service Order No. 1322 requires eleven

selected railroads operating in the grain producing areas west of the Mississippi River to place a stated percentage of their ownership of jumbo covered hopper cars in grain service. Of these cars at least half must be furnished to country elevators. By a series of exceptions the following percentages have been established.

ATSF, 55 percent; BN, 55 percent; CNW, 55 percent; Milw, 70 percent; RI, 60 percent; ICG, 40 percent; MKT, 55 percent; MP, 55 percent; SLSF, 70 percent; SooLine, 40 percent; UP, 55 percent.

Amendment No. 1 extends this order one additional week.

DATES: Effective 11:59 p.m., April 30, 1978; expires 11:59 p.m., May 7, 1978.

FOR FURTHER INFORMATION CONTACT:

C. C. Robinson, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, telephone 202-275-7840, Telex 89-2742.

SUPPLEMENTARY INFORMATION: The amendment is printed in full below.

At a Session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 27th day of April 1978.

Upon further consideration of Revised Service Order No. 1322 (43 FR 16342 and 16979), and good cause appearing therefor:

It is ordered, That: Revised Service Order No. 1322 be, and it is hereby,

amended by substituting the following paragraph (j) for paragraph (j) thereof:

§ 1033.1322 Service Order No. 1322.

(a) *Distribution of grain cars* * * *

* * * * *

(j) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., May 7, 1978, unless otherwise modified, changed or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., April 30, 1978.

(49 U.S.C. 1(10-17).)

It is further ordered, That a copy of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this amendment be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-12065 Filed 5-2-78; 8:45 am]

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

[7590-01]

NUCLEAR REGULATORY COMMISSION

[10 CFR Parts 30, 40, 50 and 70]

DECOMMISSIONING CRITERIA FOR NUCLEAR FACILITIES

Extension of Comment Period

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Extension of comment period on advance notice of proposed rulemaking.

SUMMARY: On March 13, 1978, the U.S. Nuclear Regulatory Commission published an advance notice of proposed rulemaking relating to the development of decommissioning criteria for nuclear facilities. The Commission has been requested to extend the comment period of the advance notice in order to provide more time to submit public comments. This notice extends the comment period of the March 13, 1978 notice.

DATES: Comment period expires July 15, 1978.

ADDRESSES: Interested persons are invited to submit written comments and suggestions to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Copies of comments received by the Commission may be examined in the Commission's Public Document Room at 1717 H Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert M. Bernero, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington D.C. 20555, phone 301-443-3573.

SUPPLEMENTARY INFORMATION: On March 13, 1978, the Nuclear Regulatory Commission published in the FEDERAL REGISTER (43 FR 10370) an advance notice of proposed rulemaking to invite advice and recommendations on several questions concerning decommissioning nuclear facilities.

In the notice, the Commission explained present requirements and practices relating to the decommissioning of nuclear facilities. The Commission further described ongoing studies at the Battelle Pacific Northwest laboratory to provide bases for

the reevaluation and development of decommissioning criteria and guidelines for light water reactors and their supporting fuel cycle facilities. Comments were requested on several specific issues and questions in order to invite advice and recommendations on the matter of overall decommissioning policy development. Interested persons were invited to submit comments on the notice by May 15, 1978.

In view of a request for additional comment time from Debevoise & Liberman on behalf of Arkansas Power & Light Co., Dallas Power & Light Co., Jersey Central Power & Light Co., Metropolitan Edison Co., Pacific Gas & Electric Co., Pennsylvania Electric Co., Southern California Edison Co., Texas Electric Service Co., Texas Power & Light Co., Texas Utilities Generating Co., Virginia Electric & Power Co., and Yankee Atomic Electric Co., the Commission is hereby extending the time for submitting written comments or suggestions concerning the notice to July 15, 1978. Any written submissions should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

Dated at Washington, D.C. this 27th day of April 1978.

For the Nuclear Regulatory Commission,

SAMUEL J. CHILK,
Secretary of the Commission.

[FR Doc. 78-11997 Filed 5-2-78; 8:45 am]

[6750-01]

FEDERAL TRADE COMMISSION

[16 CFR Part 13]

[File No. 772-3032]

PUBLIC SERVICE CO. OF COLORADO

Consent Agreement with Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Provisional consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this provisionally accepted consent agreement, among other things, would require a

Denver, Colo., utility company to cease, in connection with the advertising and sale of non-utility products and services, failing to properly provide consumers with credit disclosures required by Federal Reserve System regulations.

DATE: Comments must be received on or before June 30, 1978.

ADDRESS: Comments should be directed to Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

Paul C. Daw, Director, Denver Regional Office, Federal Trade Commission, Suite 2900, 1405 Curtis Street, Denver, Colo. 80202, 303-837-2271.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the FTC Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with the Commission, has been placed on the public record, together with material submitted to the Commission that is not exempt from public disclosure under the Freedom of Information Act, for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's rules of practice (16 CFR 4.9(b)(14)).

UNITED STATES OF AMERICA BEFORE FEDERAL TRADE COMMISSION

In the matter of Public Service Co. of Colorado, a corporation. File No. 772 3032 Agreement Containing Consent Order to Cease and Desist.

The Federal Trade Commission having initiated an investigation acts and practices of Public Service Co. of Colorado, a corporation, and it now appearing that Public Service Co. of Colorado, hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Public Service Co. of Colorado, by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

(1) Proposed respondent Public Service Co. of Colorado is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Colorado, with its offices and principal place of business located at 550 15th Street, in the city of Denver, State of Colorado.

(2) Proposed respondent admits all the proposed findings of fact attached hereto as appendix A.

(3) Proposed respondent waives: (a) Any further procedural steps; (b) the requirement that the Commission's decision contain a statement of conclusions of law; and (c) all rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

(4) This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. Thereafter, the Commission may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such other action as it may consider appropriate, or proceed as specified in paragraph 5 hereof.

(5) This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules, the Commission may, without further notice to proposed respondent: (1) Issue its complaint corresponding in form and substance with the draft complaint here attached and its decision containing the following order to cease and desist, incorporating the findings of fact attached hereto as appendix A, in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Mailing of the complaint and decision, containing the agreed-to order, to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and

no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

(6) Proposed respondent has read the proposed complaint and order contemplated hereby, and understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order, and that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

(7) The signing of this agreement is for settlement purposes only and does not constitute an admission by any party that the law has been violated as alleged in the proposed complaint.

ORDER

It is ordered, That respondent Public Service Co. of Colorado, a corporation, its successors and assigns and respondent's officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with any extension or arrangement for the extension of consumer credit, or in connection with any advertisement to aid, promote, or assist, directly or indirectly, any extension of consumer credit, as "consumer credit" and "advertisement" are defined in regulation Z (12 CFR 226) of the Truth-in-Lending Act (15 U.S.C. §1601, et seq., as amended) do forthwith cease and desist from:

(1) Entering into any credit transaction, including, but not limited to, transactions for the installation of insulation, in which a security interest, as "credit" and "security interest" are defined in section 226.2 of regulation Z, is or will be retained or acquired in real property with is used or is expected to be used as the principal residence of a consumer customer, without giving the customer notice of his or her right to rescind said transaction, without penalty, until midnight of the third business day following the date of consummation of the transaction or delivery of all material disclosures, whichever is later, as required by section 226.9 of regulation Z and in the manner and form set forth therein.

(2) Stating in any credit advertisement the rate of finance charge unless said rate is expressed as an annual percentage rate (using the term "annual percentage rate"), as "finance charge" and "annual percentage rate" are defined in section 226.2 of regulation Z, as required by section 226.10(d)(1) of regulation Z.

(3) Stating in any credit advertisement that no downpayment is required, or stating the amount of the downpayment or of any installment

payment required (either in dollars or as a percentage), the dollar amount of any finance charge, the number of installments or the period of repayment, or stating that there is no charge for credit, unless all of the following items are also clearly and conspicuously set forth in terminology prescribed by § 226.8 of regulation Z, as required by § 226.10(d)(2) of regulation Z: (a) The cash price; (b) the amount of the downpayment required or that no downpayment is required, as applicable; (c) the number, the amount, and due dates or period of payments scheduled to repay the indebtedness if the credit is extended; (d) the amount of the finance charge expressed as an annual percentage rate; and (e) the deferred payment price.

(4) Failing in any consumer credit transaction or advertisement, to make all disclosures that are required by §§ 226.6, 226.7, 226.8, 226.9, and 226.10 of regulation Z in the manner, form, and amount specified therein.

It is further ordered, That respondent notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the respondent shall forthwith distribute a copy of this order to each of its operating divisions, to each person responsible for or connected with preparation of its advertisements, and to each person responsible for or connected with solicitation and sale of residential insulation for respondent, and that respondent secure from each such person a signed statement acknowledging receipt of said order.

It is further ordered, That respondent Public Service Co. of Colorado shall, within sixty (60) days after this order becomes final, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

APPENDIX A—FINDINGS OF FACT

FINDINGS

1. Proposed respondent is now and for many years has been, engaged in the generation, purchase, transmission, distribution, and sale of electricity, and in the purchase, transmission, distribution, and sale of natural gas. Respondent also advertises for sale and/or sells to consumers products and services not provided through pipe, wire, or other connected facilities. In order to promote the conservation of energy, proposed respondent has initiated an insulation program in connection with which it advertises for sale and sells to consumers insulation for, and the installation of insulation in, residential premises.

2. In the ordinary course and conduct of its business as aforesaid, proposed respondent regularly extends or arranges for the extension of consumer credit, and is a creditor, as "consumer credit" and "creditor" are defined in § 226.2 of regulation Z (12 CFR 226, the implementing regulation of the Truth-in-Lending Act (15 U.S.C. § 1601, et seq., as amended), duly promulgated by the Board of Governors of the Federal Reserve System.

3. Subsequent to September 1, 1975, proposed respondent has entered into credit transactions with consumer customers for the installation of insulation in residential premises, in which transactions, under the provisions of Colo. Rev. Stat. §§ 38-22-101, et seq., a security interest, as "security interest" is defined in § 226.2 of regulation Z, is or will be used as the principal residence of the customer.

4. There have not been waivers of lien rights by all potential security interest claimants in connection with the credit transactions referred to in paragraph 3; however, proposed respondent has never attempted to enforce such lien rights.

5. Proposed respondent's entry into the transactions described in paragraph 3, in which a security interest is or will be retained by proposed respondent or other potential lien claimants, entitles proposed respondent's consumer customers to proper notification of their right to rescind such transactions, without penalty, through midnight of the third business day following consummation of the transaction or delivery of all material disclosures, whichever is later, pursuant to § 226.9 of regulation Z.

6. In connection with the credit transactions referred to in paragraph 3, proposed respondent notified its customers of their right to rescind the transactions within 3 days; however, such notice did not completely comply with the requirements of § 226.9 of regulation Z in that it failed to include substantive information and follow the form set forth therein. Once the matter was brought to proposed respondent's attention, its forms were revised to comply with § 226.9 of regulation Z.

7. Subsequent to September 1, 1975, in the ordinary course and conduct of its business as aforesaid, proposed respondent has caused to be published advertisements for goods and services, which advertisements aid, promote, or assist, directly or indirectly, credit sales and other extensions of other than open end credit, as "advertisement" and "credit sale" are defined in § 226.2 of regulation Z.

8. In one of the advertisements referred to in paragraph 7, proposed respondent stated the rate of the finance charge as "annual interest rate," rather than as an "annual percentage," as required by the provisions of § 226.10(d)(1) of regulation Z.

9. In the same advertisement referred to in paragraph 7, proposed respondent stated the amount of the downpayment (as a percentage of the sales price) without also stating, as required by § 226.10(d)(2) of regulation Z, the deferred payment price.

10. Proposed respondent has cooperated fully in the Commission's investigation and has made available all records and documents requested by the Commission during the course of such investigation.

ANALYSIS OF PROPOSED CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission has accepted an agreement to a proposed consent order from Public Service Co. of Colorado.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Public Service Co. of Colorado is an investor owned public utility company providing electric and gas service to over 2 million customers in and around Denver, Colo. The complaint alleges that the company also provides non-utility products and services, including the installation of insulation in residential premises. It is alleged that the contracts for insulating residential premises, entered into between the company and its consumer customers, gave rise to mechanic's and materialmen's liens on such premises in favor of the company and its subcontractors. It is further alleged that the creation of such liens imposed upon the company the obligation to give each customer proper notice of a right to cancel the insulation contract within 3 days after the contract was signed. The complaint alleges that the company failed to give such notice in the required manner and form. It is also alleged that the company published credit advertisements for its home insulation program which used improper credit terminology and failed to disclose required credit terms. The complaint alleges that such conduct is a violation of the Truth-in-Lending Act and of section 5 of the Federal Trade Commission Act.

Through this agreement Public Service Co. of Colorado admits the facts substantially as alleged in the complaint but does not admit any violation of law. The agreed-to order prohibits the company from entering into any credit transaction in which a lien or security interest is retained in a customer's principal residence without giving proper notice of the customer's right to cancel the transaction. The order also prohibits the company from publishing any credit advertisements which do not contain proper terminology or which fail to include all required credit terms and disclosures. The company is also required to distribute the order to personnel responsible for advertising and for solicitation of insulation contracts, and to file reports with the Commission setting forth the manner and form in which they have complied with the order.

The purpose of this analysis is to facilitate public comment on the proposed order; it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

JAMES A. TOBIN,
Acting Secretary.

[FR Doc. 78-11967 Filed 5-2-78; 8:45 am]

[6560-01]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 141]

[FRL 889-2]

INTERIM PRIMARY DRINKING WATER REGULATIONS

Proposed Regulations for Control of Organic Chemical Contaminants in Drinking Water

AGENCY: Environmental Protection Agency.

ACTION: Extension of comment period and change of public hearing date.

SUMMARY: On February 9, 1978, the Environmental Protection Agency published proposed regulation (43 FR 5756 et seq.) for the control of organic chemical contaminants in drinking water. At that time, the Agency stated that comments on the proposed regulations should be submitted by May 31, 1978. It also established a schedule of dates on which public hearings would be held. The final hearing of the series of seven was set for May 5, 1978, in Washington, D.C. Today, the Agency extends the period for submission of comments on these proposed regulations for an additional 60 days and reschedules the public hearing of May 5, 1978.

DATES: The comment period for the proposed regulations to control organic chemical contaminants in drinking water is extended until July 31, 1978. The public hearing originally scheduled in Washington, D.C., has been canceled and is rescheduled at the same location on July 11-12, 1978.

ADDRESS: Submit comments to: Victor J. Kimm, Deputy Assistant Administrator for Water Supply, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Joseph A. Cotruvo, Director, Criteria and Standards Division, Office of Drinking Water (WH-550), Room 1111, WSME, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, 202-755-5643 or 202-472-5016.

SUPPLEMENTARY INFORMATION: This notice extends until July 31, 1978, the period for public comment with respect to the notice, published February 9, 1978 (43 FR 5756 et seq.), proposing regulations for the control of organic chemical contaminants in drinking water. This notice also announces a change in the date of the hearing to be held in Washington, D.C., with respect to these proposals. It is now to be held July 11-12 instead of May 5.

A petition for an extension of time was submitted in behalf of a group of water utilities including Indianapolis Water Co., Louisville Water Co., and others. They asked that the original deadline of May 31, 1978, be extended until October 31, 1978. The petitioners argued that for them to make informed comment additional time was needed due to the unavailability of supporting documents and other references and for the retention of and consultation with experts knowledgeable with regard to the proposed regulations. Other commenters such as the National League of Cities, have also indicated the desirability of more time.

I have determined that a reasonable extension of the comment period for sixty (60) days, is in the public interest. This will result in a total comment time of 180 days. The comment period is therefore hereby extended to July 31, 1978. I believe that this provides for ample opportunity for obtaining any remaining unlocated documents and for review of the material, including consultation with experts, if necessary. Anyone having difficulty in obtaining copies of supporting documentation should contact Dr. Joseph Co-truvo, Director, Criteria and Standards Division, Office of Drinking Water (WH-550), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, 202-472-5016.

In addition, the petitioners requested that additional public hearings be scheduled. I believe that seven nationwide as well as a regional hearing in Dallas and other public forums attended by Agency officials knowledgeable

with respect to the proposed regulations have provided sufficient opportunity for the public to be heard. In conjunction with this extension of the comment period for 60 days, however, I have decided to delay the final hearing in Washington, D.C., originally scheduled for May 5, 1978, to a time to the end of the comment period. The final hearing in Washington, D.C., is therefore hereby rescheduled for July 11 and 12, 1978, at 9 a.m. The precise location of the hearing will be published in the FEDERAL REGISTER as soon as that information is finalized.

A substantial number of comments has already been received on the proposed regulation. Based on our initial review of those comments, we have found that several issues raised in the notice for proposed rulemaking warrant particular attention. Therefore, we wish to solicit again the public's views on the following issues:

1. The soundness and reasonableness of the three criteria specified for determining the design parameters for the GAC treatment technique. These three criteria relate to breakthrough of volatile organohalogen compounds and total organic carbon as indicators of the efficient performance of granular activated carbon for removal of synthetic organic chemicals generally. The selection and magnitude of these or other parameters will significantly impact the operating and cost characteristics of the carbon treatment system.

2. The criteria which the Agency or State will consider in evaluating a request for a variance from the treatment technique requirement. Is the

demonstration now required to be made by a system seeking a variance too stringent or too lenient? These criteria will be used to judge the contamination potential of specific drinking water sources. Their application will determine which public water systems will ultimately be required to install granular activated carbon treatment for removal of synthetic organic chemicals. Should these criteria be more specific or quantitative, and if so, how?

3. The reasonableness of the estimated costs of compliance by affected public water systems with respect to either or both the MCL for total trihalomethanes and/or the GAC treatment technique. A wide range of cost estimates for installation and operation of granular activated carbon for removal of synthetic organic chemicals has already been presented to the Agency. Commenters are urged to submit more detailed information in support of their cost estimates during this extended comment period so that the Agency can properly evaluate such information.

The Agency expects that if substantial new information in support of the proposed regulation is developed during the comment period, such documentation will be made available to the public by further notice in the FEDERAL REGISTER and appropriate comment time provided.

Dated: April 25, 1978.

THOMAS C. JORLING,
Assistant Administrator for
Water and Hazardous Materials.

[FR Doc. 78-11988 Filed 5-2-78; 8:45 am]

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and Hermosillo, Mexico, and the coterminal points Los Angeles, San Francisco, and Oakland, Calif., and Seattle, Wash.;

(2) Between the coterminal points Mexico City, Guadalajara, Ciudad Juarez, Acapulco, Zihuatanejo, Manzanillo, Puerto Vallarta, Mazatlan, San Jose del Cabo, La Paz, and Loreto, Mexico, and the terminal point Denver, Colo.

(3) Between the coterminal points Mexico City, Acapulco, Guadalajara, Zihuatanejo, Manzanillo, Puerto Vallarta, Mazatlan, San Jose del Cabo, La Paz, Loreto, Oaxaca, Monterrey, and Tampico, Mexico, and the coterminal points Harlingen, San Antonio, and Dallas/Fort Worth, Tex., and Memphis, Tenn.;

(4) Between the coterminal points Guadalajara, Manzanillo, Puerto Vallarta, Mazatlan, San Jose del Cabo, La Paz, and Loreto, Mexico, and the terminal point Chicago, Ill.

(5) Between the coterminal points Mexico City, Acapulco, Oaxaca, Zihuatanejo, and Monterrey, Mexico, and the coterminal points Kansas City and St. Louis, Mo., Chicago, Ill., and Minneapolis/St. Paul, Minn., and beyond any of the U.S. coterminals to Toronto and Montreal, Canada;

(6) Between the coterminal points Mexico City, Acapulco, Guadalajara, Zihuatanejo, Manzanillo, Puerto Vallarta, Mazatlan, San Jose del Cabo, La Paz, and Loreto, Mexico, and the terminal point Atlanta, Ga.;

(7) Between the coterminal points Mexico City, Acapulco, Guadalajara, and Monterrey, Mexico, and the coterminal points Detroit, Mich., Cleveland, Ohio, Washington, D.C./Baltimore, Md., and Philadelphia, Pa., and beyond any of the U.S. coterminals to Toronto and Montreal, Canada;

(8) Between the coterminal points Mexico City, Merida, Cozumel, and Punta Cancun, Mexico, and the terminal point San Juan, Puerto Rico;

(9) Between the coterminal points Cozumel, and Punta Cancun, Mexico, and the terminal point Miami, Fla.;

(10) Between the coterminal points Mexico City, Merida, Cozumel, and Punta Cancun, Mexico, and the terminal point Tampa, Fla.;

(11) Between the coterminal points Merida, Cozumel, and Punta Cancun, Mexico, and the terminal point Dallas/Fort Worth, Tex.;

(12) Between the coterminal points Merida, Cozumel, and Punta Cancun, Mexico, and the coterminal points Chicago, Ill., and Minneapolis/St. Paul, Minn.; and

(13) Between the coterminal points Merida, Cozumel, and Punta Cancun, Mexico, and the coterminal points Detroit, Mich., Cleveland, Ohio, and Philadelphia, Pa.; and

(b) to engage in charter trips in foreign air transportation subject to the

terms, conditions, and limitations prescribed in Part 212 of the Board's Economic Regulations;

3. That the public interest requires that the exercise of the privileges granted by such amended permit shall be subject to the terms, conditions, and limitations contained in the specimen form of permit attached to this order, and to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board;

4. That Compania Mexicana de Aviacion, S.A. is fit, willing, and able properly to perform the air transportation proposed in its application, and to conform to the provisions of the Act and the rules, regulations, and requirements of the Board;

5. That an oral hearing is not required in the public interest;

6. That except to the extent granted, the application of Compania Mexicana de Aviacion, S.A. in Docket 32296 should be denied; and

7. That the amendment of Compania Mexicana de aviacion, S.A.'s foreign air carrier permit is not a "Major federal action significantly affecting the quality of the human environment" within the meaning of section 102 (2)(C) of the National Environmental Policy Act of 1969, and will not constitute a "major regulatory action" under the Energy Policy and Conservation Act of 1975 (EPACA), as defined in section 313.4 (a)(1) of the Board's Regulations.⁷

IT IS THEREFORE ORDERED THAT:

1. All interested persons are directed to show cause why the Board should not, subject to the approval of the President under section 801 of the Act, make final its tentative findings and conclusions and issue a foreign air carrier permit in the form attached to Compania Mexicana de Aviacion S.A.;

2. Any interested person having objection to the issuance of an order making final the Board's tentative findings and conclusions and issuing the permit shall, within 15 days after the adoption of this order, file with the Board and serve upon the persons named in paragraph 5, a statement of objections specifying the part or parts of the tentative findings and conclusions objected to, together with a summary of testimony, statistical data and such evidence expected to be relied

⁷Our tentative finding is based upon the fact that the proposed amendment will not result in any significant change in the level of service at any United States point. Thus, our action will not constitute a major Federal action within the meaning of the National Environmental Policy Act of 1969. Moreover, Mexicana's projected near-term implementation of the authority sought would not result in a net annual increase in fuel consumption over 10 million gallons.

upon in support of the statement of objections. If an oral hearing is requested, the objector should state in detail why such hearing is considered necessary and what relevant and material facts he would expect to establish through such hearing which cannot be established in written pleadings;

3. If timely and properly supported objections are filed, further consideration will be given the matters and issues raised by the objector before further action is taken by the Board; *Provided*, That the Board may proceed to enter an order in accordance with its tentative findings and conclusions set forth in the order if it determines that there are no factual issues present that warrant the holding of an oral hearing.⁸

4. In the event no objections are filed, all further procedural steps will be deemed to have been waived and the Secretary shall enter an order which, subject to the approval of the President, (1) shall make final the Board's tentative findings and conclusions set forth in this order, and (2) shall issue an amended foreign air carrier permit to the applicant in the specimen form attached; and

5. This order shall be served upon Compania Mexicana de Aviacion, S.A.; the Ambassador of Mexico in Washington, D.C.; the United States Departments of State and Transportation; American Airlines, Inc.; Braniff Airways, Inc.; Eastern Air Lines; Frontier Airlines; Hughes Airwest; Pan American World Airways, Inc.; Texas International Airlines, Inc.; and Western Air Lines, Inc.

This order will be published in the FEDERAL REGISTER and will be transmitted to the President.

All Members concurred except Chairman Kahn who did not participate.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

UNITED STATES OF AMERICA, CIVIL
AERONAUTICS BOARD, WASHINGTON, D.C.

PERMIT TO FOREIGN AIR CARRIER (AS AMENDED)

Compania Mexicana De Aviacion, S.A. is authorized, subject to the following provision, the provisions of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued under it, to engage in foreign air transportation of persons, property, and mail, as follows:

(1) Between the coterminal points Mexico City, Acapulco, Guadalajara, Puerto Vallarta, Mazatlan, Mexicali, and Hermosillo, Mexico, and the coterminal points Los Angeles, San Francisco, and Oakland Calif., and Seattle, Wash.;

(2) Between the coterminal points Mexico City, Guadalajara, Ciudad Juarez, Acapulco,

⁸Since provision is made for the filing of objections to this order, petitions for reconsideration will not be entertained.

Zihuatanejo, Manzanillo, Puerto Vallarta, Mazatlan, San Jose del Cabo, La Paz, and Loreto, Mexico, and the terminal point Dever, Colo.;

(3) Between the coterminal points Mexico City, Acapulco, Guadalajara, Zihuatanejo, Manzanillo, Puerto Vallarta, Mazatlan, San Jose del Cabo, La Paz, Loreto, Oaxaca, Monterrey, and Tampico, Mexico, and the coterminal points Harlingen, San Antonio, and Dallas/Fort Worth, Tex., and Memphis, Tenn.;

(4) Between the coterminal points Guadalajara, Manzanillo, Puerto Vallarta, Mazatlan, San Jose del Cabo, La Paz, and Loreto, Mexico, and the terminal point Chicago, Ill.;

(5) Between the coterminal points Mexico City, Acapulco, Oaxaca, Zihuatanejo, and Monterrey, Mexico, and the coterminal points Kansas City and St. Louis, Mo., Chicago, Ill., and Minneapolis/St. Paul, Minn., and beyond any of the U.S. coterminals to Toronto and Montreal, Canada;

(6) Between the coterminal points Mexico City, Acapulco, Guadalajara, Zihuatanejo, Manzanillo, Puerto Vallarta, Mazatlan, San Jose del Cabo, La Paz, and Loreto, Mexico, and the terminal point Atlanta, Ga.;

(7) Between the coterminal points Mexico City, Acapulco, Guadalajara, and Monterrey, Mexico, and the coterminal points Detroit, Mich., Cleveland, Ohio, Washington, D.C./Baltimore, Md., and Philadelphia, Pa., and beyond any of the U.S. coterminals to Toronto and Montreal, Canada;

(8) Between the coterminal points Mexico City, Merida, Cozumel, and Punta Cancun, Mexico, and the terminal point San Juan, P.R.;

(9) Between the coterminal points Cozumel, and Punta Cancun, Mexico, and the terminal point Miami, Fla.;

(10) Between the coterminal points Mexico City, Merida, Cozumel, and Punta Cancun, Mexico, and the terminal point Tampa, Fla.;

(11) Between the coterminal points Merida, Cozumel, and Punta Cancun, Mexico, and the terminal point Dallas/Fort Worth, Tex.;

(12) Between the coterminal points Merida, Cozumel, and Punta Cancun, Mexico, and the coterminal points Chicago, Ill., and Minneapolis/St. Paul, Minn.; and

(13) Between the coterminal points Merida, Cozumel, and Punta Cancun, Mexico, and the coterminal points Detroit, Mich., Cleveland, Ohio, Philadelphia, Pa.

The holder shall be authorized to engage in charter trips in foreign air transportation, subject to the terms, conditions, and limitations prescribed by Part 212 of the Board's Economic Regulations.

This permits shall be subject to the condition that on routes 5 and 7 any flight which serves a point beyond the United States shall originate or terminate at a point in Mexico.

The holder shall conform to the airworthiness and airman competency requirements prescribed by the Government of Mexico for Mexican international air service.

This permit shall be subject to applicable provisions of any treaty, convention, or agreements affecting international air transportation now in effect, or that may become effective during the period this permit remains in effect, to which the United States and Mexico shall be parties.

The holder shall keep on deposit with the Board a signed counterpart of CAB Agreement 18900, an agreement relating to liability

limitations of the Warsaw Convention and the Hague Protocol approved by Board Order E-23680, May 13, 1966, and a signed counterpart of any amendment or amendments to such agreement which may be approved by the Board and to which the holder becomes a party.

The holder (1) shall not provide foreign air transportation under this permit unless there is in effect third-party liability insurance in the amount of \$1,000,000 or more to meet potential liability claims which may arise in connection with its operations under this permit, and unless there is on file with the Docket Section of the Board a statement showing the name and address of the insurance carrier and the amounts and liability limits of the third-party liability insurance provided, and (2) shall not provide foreign air transportation of persons unless there is in effect liability insurance sufficient to cover the obligations assumed in CAB Agreement 18900, and unless there is on file with the Docket Section of the Board a statement showing the name and address of the insurance carrier and the amounts and liability limits of the passenger liability insurance provided. Upon request the Board may authorize the holder to supply the name and address of an insurance syndicate in lieu of the names and addresses of the member insurers.

The initial tariff filed by the holder shall not set forth rates, fares and charges lower than those that may be in effect for any U.S. air carrier in the same foreign air transportation; However, This limitation shall not apply to a tariff filed after the initial tariff regardless of whether this subsequent tariff is effective before or after the introduction of the authorized service.

By accepting this permit the holder waives any right it may possess to assert any defense of sovereign immunity from suit in any action or proceeding instituted against the holder in any court or other tribunal in the United States (or its territories or possessions) based upon any claim arising out of operations by the holder under this permit.

The exercise of the privileges granted here shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This permit shall be effective on —, Unless otherwise terminated at an earlier date pursuant to the terms of any applicable treaty, convention, or agreement, this permit shall terminate (1) upon the effective date of any treaty, convention, or agreement, or amendment thereto, which shall have the effect of eliminating the routes here authorized from the routes which may be operated by airlines designated by the Government of Mexico (or in the event of the elimination of any part of a route or routes here authorized, the authority granted shall terminate to the extent of such elimination), or (2) upon the effective date of any permit granted by the Board to any other carrier designated by the Government of Mexico in lieu of the holder hereof, or (3) upon the termination or expiration of the Air Transport Services Agreement between the Government of the United States and the Government of Mexico, effective August 15, 1960, as amended and extended: *Provided, however*, That if prior to the occurrence of the event specified in clause (3) of this paragraph, the operation of the foreign air transportation here authorized becomes the subject of any treaty, convention, or

agreement to which the United States and Mexico are or shall become parties, then this permit is continued in effect during the period provided in such treaty, convention, or agreement.

The Civil Aeronautics Board, through its Secretary, has executed this permit and affixed the seal of the Board on —.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-12053 Filed 5-2-78; 8:45 am]

[6320-01]

[Docket No. 30598]

COSTELLO TRAVEL SERVICE, INC. AND BUREAU OF ENFORCEMENT; CIE TOURS INTERNATIONAL, INC. AND EMERALD INTERNATIONAL TRAVEL, INC.; ENFORCEMENT PROCEEDING

Postponement of Hearing Suspension of Further Procedural Steps

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that the hearing in the above-entitled proceeding, which was assigned to be held on May 2, 1978 (43 FR 13597, March 31, 1978), is indefinitely postponed at the request of the Bureau of Enforcement which has reported that it will submit to the Judge a stipulation of settlement and Order under Rule 215, which have been agreed to in principle but not, as yet, formalized.

Further, at the request of counsel for CIE Tours International, one of the respondents to this action, all additional procedural steps, including the requirement for the respondents to file witness lists, and the need of witnesses to comply with outstanding subpoenas issued at the request of the Bureau are indefinitely suspended.

Dated at Washington, D.C., April 27, 1978.

FRANK M. WHITING,
Administrative Law Judge.

[FR Doc. 78-12052 Filed 5-2-78; 8:45 am]

[1505-01]

[Order No. 78-4-67]

NATIONAL AIRLINE'S, INC.

Service at Tallahassee

Correction

In FR Doc. 78-10763 appearing at page 16790 of the issue of Thursday, April 20, 1978, in the second column directly above the heading "National Airlines, Inc." please insert "Order No. 78-67".

[3510-24]

DEPARTMENT OF COMMERCE

Economic Development Administration

CREWCO, INC., BRAYCO PRODUCTS, INC.,
AND CONAWAY-WINTER, INC.Petitions for Determinations of Eligibility To
Apply for Trade Adjustment Assistance

Petitions have been accepted for filing from three firms: (1) Crewco, Inc., Highway 115, Cornelius, N.C. 28031, a producer of men's and boys' shirts (accepted April 26, 1978); (2) Bravco Products, Inc., 601 Washington Street, Lynn, Mass. 01901, a producer of soles for footwear (accepted April 27, 1978); and (3) Conaway-Winter, Inc., Park Street, P.O. Box 280, Willow Springs, Mo. 65793, a producer of infants' shoes (accepted April 27, 1978). The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (Pub. L. 93-618) and § 315.23 of the Adjustment Assistance Regulations for Firms and Communities (13 CFR Part 315).

Consequently, the U.S. Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Chief, Trade Act Certification Division, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

CHARLES L. SMITH,
Acting Chief, Trade Act Certification Division, Office of
Planning and Program Support.

[FR Doc. 78-12026 Filed 5-2-78; 8:45 am]

[3510-03]

Maritime Administration

[Docket No. S-604]

DELTA STEAMSHIP LINES, INC.

Application

Notice is hereby given that Delta Steamship Lines, Inc. (Delta), by letter dated April 7, 1978, as supplemented on April 12, 1978, in connection with its application to acquire certain vessels and services from Prudential Lines, Inc. (Prudential), has requested interchange and transfer

rights of vessels between services as they presently exist in the respective operating-differential subsidy contracts and between Delta's existing and prospective services as follows:

Four M-Class combination passenger-cargo vessels between services on Trade Routes Nos. TR 20, 2, and 4, and the service on TR 23, 24, and 25.

Eight C3 type and eight C4 type freight vessels (breakbulk) and three C9 and one C8 LASH type freight vessels between services on TR 14-2, 20, 2, and 4, and the service on TR 23, 24, and 25.

The specific services to which Delta's request would be applicable are as follows:

Trade Route No. 20—U.S. Gulf Coast/East Coast of South America—service provided by LASH and C3 type freight ships on minimum sailings of 26 and overall maximum of 77 for this service and Trade Route No. 14-2.

Trade Route No. 14-2—U.S. Gulf Coast/West Coast of Africa—service provided by C3 type freight ships with minimum of 24 sailings.

Trade Route No. 4—U.S. Atlantic/Venezuela—Netherlands West Indies—North Coast of Colombia range, Jamaica, Dominican Republic, Haiti, and Cuba (excluding Guantanamo Bay)—service provided by one LASH ship and C4 freight ships as required with minimum of 22 and maximum of 33 sailings.

Trade Route No. 2—U.S. Atlantic/West Coast of South America—service provided by C4 type freight ships with a minimum of 48 and maximum of 62 sailings.

Trade Routes Nos. 23, 24, and 25—U.S. Pacific/Pacific, Atlantic, and Caribbean areas of South America—service provided by C4 type freight ships and C4 type combination passenger-cargo ships with a minimum of 25 and a maximum of 42 sailings.

Existing vessel assignments and interchange and transfer privileges are as follows:

Delta: Three C9 LASH vessels assigned to TR 20 service Eight C3 type freight ships unassigned to specific service but may be interchanged or transferred between services on TR 14-2 and 20.

Prudential: One C8 LASH vessel assigned to TR 4 service Eight C4 type freight ships unassigned to specific service but may be interchanged or transferred between services on TR 2 and 4 and the service on TR 23, 24, 25. Four C4 combination passenger/cargo vessels (M-Class) assigned to the service on TR 23, 24, 25.

As used in this Notice the term "interchange" means the approximately simultaneous substitution of vessels. The term "transfer" means removal of a vessel from one service and placement into another. Delta proposes to exercise the interchange and transfer

privileges in such a manner as to comply with the minimum and maximum sailing requirements specified for each subsidized service.

Any person, firm, or corporation having an interest in such application who desires to offer views and comments thereon for consideration by the Maritime Subsidy Board should submit them in writing, in triplicate, to the Secretary, Maritime Subsidy Board, Washington, D.C. 20230, by the close of business on May 11, 1978.

The Maritime Subsidy Board will consider views and comments and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 11.504 Operating-Differential Subsidies (ODS).)

By Order of the Maritime Subsidy Board.

Dated: April 26, 1978.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc. 78-11974 Filed 5-2-78; 8:45 am]

[3510-22]

National Oceanic and Atmospheric
Administration

ATLANTIC GROUND FISH

Revision of Quarterly Quotas

This is to announce that the Assistant Administrator for Fisheries has determined from statistics maintained by the National Marine Fisheries Service that the quarterly quotas for cod, haddock, and yellowtail flounder (west of 69° W. longitude) were exceeded during the first quarter (January 1-March 31) of 1978. The amounts by which the quotas were exceeded were: Haddock, 1,705 metric tons; cod, Gulf of Maine, 392 metric tons; cod, other than the Gulf of Maine, 1,602 metric tons; and yellowtail flounder west of 69° W. longitude, 92 metric tons. Therefore, to ensure that the catch quotas for 1978 are not exceeded, the amount of the overage is deducted equally from the remaining three quarters of 1978. This action is effective immediately on May 3, 1978.

The revisions to the quarterly quotas made pursuant to 50 CFR 651.3(b)(2) (see FEDERAL REGISTER, March 31, 1978, page 13579) are as follows:

CATCH QUOTA

[In metric tons]

1. Haddock—	
Quarter:	
Apr. 1 to June 30	2,591
July 1 to Sept. 30	1,092
Oct. 1 to Dec. 31	1,362
2. Cod—	
GULF OF MAINE	
Quarter:	
Apr. 1 to June 30	1,629

GULF OF MAINE	
July 1 to Sept. 30.....	1,289
Oct. 1 to Dec. 31.....	1,290
GEORGES BANK AND SOUTHERN NEW ENGLAND	
Quarter:	
Apr. 1 to June 30.....	5,596
July 1 to Sept. 30.....	5,096
Oct. 1 to Dec. 31.....	5,106
3. Yellowtail flounder (west of 69° West Longitude)—	
Quarter:	
Apr. 1 to June 30.....	800
July 1 to Sept. 30.....	730
Oct. 1 to Dec. 31.....	928

Dated: April 27, 1978.

WINFRED H. MEIBOHM,
Associate Director,
National Marine Fisheries Service.
[FR Doc. 78-12020 Filed 5-2-78; 8:45 am]

[6315-01]

COMMUNITY SERVICES ADMINISTRATION

EMERGENCY ENERGY ASSISTANCE PROGRAM

Funding Declarations

The Director of the Community Services Administration (CSA) has found, based on criteria indicated in Column¹ (5) of Appendix A that Energy Related Emergencies have existed since the dates indicated in Column (3).

Therefore, eligible grantees who cover those areas indicated in Column (2) will proceed as follows:

¹All references to "column" refer to Appendix A to this Notice.

Grantees who receive funds by Letter of Credit may withdraw and expend funds in the amount approved in Column (4) or that portion of that amount which have been granted to them under Program Account 80, Emergency Energy Assistance Program.

OR

Grantees who normally receive checks are being informed that their checks are being forwarded by the Treasury Department for the total amount of the EEAP grant. However, these grantees immediately may begin obligating funds against this grant in the amount appropriated in Column (4) and from the date indicated in Column (3).

Column (3) contains the earliest date to our knowledge which provided the basis for a finding by the Director of CSA that an Energy Related Emergency existed. However, any eligible grantee within those areas covered in Column (2) may submit evidence to support the existence of Energy Related Emergency which existed between December 31, 1977, and the date given in Column (3) for a finding by the Director of CSA. (See CSA Notice 6143-7, Section 4 or § 1061.51-3 in the FEDERAL REGISTER (43 FR 9476).)

Request for supplemental (additional) funds shall be made in accordance with the provisions of Section 11.c. of CSA Notice 6143-7.

WILLIAM W. ALLISON,
Acting Director.

[FR Doc. 78-12017 Filed 5-02-78; 8:45 am]

NOTICES

STATE(S) DECLARED (1)	AREAS COVERED (2)	EMERGENCY DECLARATION DATE (3)	APPROVED ALLOCATION For Area Covered (4)	BASIS FOR DETERMINATION * (5)
<u>Region IV</u>				
Florida	Counties of: Hernando	March 20, 1978	5,507	4 b. (2) (a)
	Pinellas	March 28, 1978	33,360	4 b. (2) (a)
	Seminole	March 14, 1978	10,000	4.b. (2) (a)
	Volusia	April 18, 1978	11,223	4.b. (2) (a)
	Manatee	April 10, 1978	8,443	4 b. (2) (a)
	Escambia	April 19, 1978	10,674	4.b. (2) (a)
	Duval	April 13, 1978	24,398	4.b. (2) (a)
	Columbia Hamilton Lafayette Suwannee	April 10, 1978	22,531	4.b. (2) (a)
North Carolina	Carteret County	January 01, 1978	5,919	4.b. (2) (a)
Georgia	Counties of: Carroll Coweta Heard Meriweather Troup	April 06, 1978	21,300	4.b. (2) (a)
	Chattham	March 21, 1978	21,300	4.b. (2) (a)
	Houston Monroe Peach Twiggs	March 16, 1978	21,300	4.b. (2) (a)
	Bryan Camden Glynn Liberty Long McIntosh	April 13, 1978	21,300	4.b. (2) (a)
	Bibb	March 24, 1978	28,400	4.b. (2) (a)
	Douglas Fulton Gwinnett Rockdale	April 12, 1978	49,700	4.b. (2) (a)
	Appling Bulloch Candler Evans Jeff Davis Tattnal Toombs Wayne	March 30, 1978	35,500	4.b. (2) (a)

* Reference USA Notice 6443-7, Section I, Federal Register 1061, 51-1 (b).

NOTICES

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STATE(S) DECLARED (1)	AREAS COVERED (2)	EMERGENCY DECLARATION DATE (3)	APPROVED ALLOCATION Per Area Covered (4)	B. SIS FOR DETERMINATION (5)
Georgia	Counties of: Chattahoochee Clay Harris Muscogee Quitman Randolph Stewart Talbot	March 21, 1978	28,400	4.b. (2) (a)
	Burke Richmond Screven	April 03, 1978	35,500	4.b. (2) (a)
	Crisp Dooly Macon Marion Schley Sumter Taylor Webster	March 30, 1978	21,300	4.b. (2) (a)
	Atkinson Bacon Brantley Charlton Clinch Coffee Pierce Ware	March 27, 1978	35,500	4.b. (2) (a)
	Clayton Bleckley Dodge Laurens Montgomery Pulaski Telfair Treutlin Wheeler Wilcox	March 23, 1978	21,300	4.b. (2) (a)
		March 30, 1978	35,500	4.b. (2) (a)
<u>REGION VIII</u>				
Colorado	Counties of: Baca Bent Crowley Kiowa Otero Prowers	02/09/78	70,000	4.b. (2) (a).
	El Paso	02/09/78	70,000	4.b. (2) (a)
	Arapahoe	02/09/78	30,000	4.b. (2) (a)
	Logan Morgan Phillips Segwick Washington Yuma	02/09/78	50,000	4.b. (2) (a)
North Dakota	Entire State	01/01/78	1,093,365	4.b. (1) and 4.b. (2) (a)

* Reference USA Notice 6143-7, Section 1, Federal Register 106151-A(b).

[3810-70]

DEPARTMENT OF DEFENSE

OFFICE OF THE SECRETARY

DEFENSE SCIENCE BOARD TASK FORCE ON
CRUISE MISSILES

Advisory Committee Meeting

The Defense Science Board Task Force on Cruise Missiles will meet in closed session on June 8 and 9, 1978, at the Pentagon, Arlington, Va.

The Mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on overall research and engineering policy and to provide long-range guidance to the Department of Defense in these areas.

The Task Force will provide an analysis of the major issues concerning strategic cruise missile employment, and potential defenses to the U.S. deployment of cruise missile systems.

In accordance with section 10(d) of Appendix I, Title 5, U.S. Code, it has been determined that this Task Force meeting concerns matters listed in sec-

tion 552b(c) of Title 5 of the U.S. Code, specifically subparagraph (1) thereof, and that accordingly, this meeting will be closed to the public.

Dated: April 28, 1978.

MAURICE W. ROCHE,
Director, Correspondence and
Directives, DOD/WHS.

[FR Doc. 78-12003 Filed 5-2-78; 8:45 am]

[3128-01]

DEPARTMENT OF ENERGY

ENERGY SUPPLY AND ENVIRONMENTAL
COORDINATION ACTIntention To Issue Prohibition Orders to Certain
Major Fuel Burning Installations

The Department of Energy (DOE) hereby gives notice of its intention to issue Prohibition Orders, pursuant to the authorities granted it by section 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (ESECA), as amended, and title 10, Code of Federal Regulations (10 CFR), parts 303 and 305 to the following installations:

Docket No.	Owner	Installation	Unit No.	Location
OCU-1112-1	Ash Grove Cement Co.,	Chanute Plant.....	1	Chanute, Kans.
OCU-1112-2	do.....	do.....	2	Do.

DOE hereby also gives notice of the opportunity for oral and written presentation of data, views, and arguments by interested persons regarding the proposed Prohibition Orders.

The proposed orders would prohibit the above-named installations from burning natural gas or petroleum products as their primary energy source.

Prior to issuance of a Prohibition Order to an installation, section 2(a) of ESECA and 10 CFR 303.36(b) and 305.4(b) require that DOE find that the installation had the capability and necessary plant equipment to burn coal as of June 22, 1974, or thereafter acquired or was designed with the capability and necessary plant equipment to burn coal. A Prohibition Order may not be issued unless DOE can find that the prohibition of the utilization of natural gas or petroleum products as a primary energy source is practicable and consistent with the purposes of ESECA and that coal and coal transportation facilities will be available during the period the Prohibition Order will be in effect. DOE's proposed findings, as well as its proposed conclusions and rationale with respect to these findings, for the above-named the installations are set out in the Appendix to this notice.

These findings, conclusions and rationale may be amended as a result of comments received by DOE pursuant to this notice and other information available to DOE. The findings, conclusions and rationale will be included, with any amendments, in any Prohibition Order that is issued.

Upon completion of the proceedings described in this notice, DOE may determine to issue Prohibition Orders to both or either one of the above-named installations. The Prohibition Orders will not become effective, however, until (1) either (a) the Administrator of the Environmental Protection Agency (EPA) notifies DOE, in accordance with section 2 of the Energy Supply and Environmental Coordination Act of 1974 and section 112(b) of the Clean Air Act (CAA) Amendments of 1977, that the installations are able to burn coal and to comply with all applicable air pollution control requirements without a delayed compliance order under section 113(d)(5) of the Clean Air Act, as amended, or (b) if such notification is not given by EPA, the date that the Administrator of EPA certifies, pursuant to section 2 of the Energy Supply and Environmental Coordination Act of 1974 and section 112(b) of the Clean Air Act (CAA) Amendments of 1977, is the earliest

date that the installations will be able to comply with all applicable requirements of the Clean Air Act, as amended, and (2) DOE has considered the environmental impact of making the orders effective, pursuant to 10 CFR 208.3(a)(4) and 305.9, and has served the affected installations with Notices of Effectiveness, as provided in 10 CFR 303.10(b), 303.37(b), and 305.7. The date the Prohibition Order will be effective will be stated in the Notice of Effectiveness.

10 CFR 305.9 requires that, prior to issuance of a Notice of Effectiveness to an installation, DOE shall perform an analysis of the environmental impact of the issuance of such Notice of Effectiveness. That analysis shall result in either (1) issuance of a declaration that the Prohibition Order will not, if made effective by issuance of a Notice of Effectiveness, be likely to have a significant impact on the quality of the human environment, or (2) the preparation by DOE of an environmental impact statement covering significant site-specific impacts that are likely to result from the Prohibition Order and that have not been adequately addressed in the Final Programmatic Environmental Impact Statement or in other official documents made publicly available. If DOE prepares an environmental impact statement covering significant site-specific impacts resulting from making a Prohibition Order effective, the statement shall be prepared and published for comment in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.) prior to issuance of a Notice of Effectiveness. Interested persons may request a public hearing pursuant to 10 CFR 303.173 to comment on the contents of a draft environmental impact statement. With respect to comments regarding any impact on air quality that might result from a proposed Prohibition Order, however, it should be recognized that ESECA has assigned to EPA the primary responsibility for analyzing the effect of any such order on the Nation's air quality and for determining the applicable air pollution control requirements that apply to the installation that has been issued an order. It is expected that an installation to which a Prohibition Order is issued may be eligible to apply for a delayed compliance order pursuant to section 113(d) of the CAA, 42 U.S.C. 7413(d). If EPA decides to issue a delayed compliance order, it must also provide an opportunity for a public hearing. Enclosed with the Notice of Effectiveness may be a compliance reporting schedule to insure that the installation will be able to comply with the prohibition

of the burning of natural gas or petroleum products as a primary energy source on the effective date specified in the Notice of Effectiveness.

Public comment on the proposal to issue Prohibition Orders to the installations listed above is invited in the form of written and oral presentation of data, views, and arguments. Comments should relate to individual docket numbers and should make clear to which docket number the individual comment is addressed.

Comments should address (1) the adequacy and validity of each of the proposed findings and the conclusions and rationale in support of these findings, (2) the environmental impact of making effective a Prohibition Order, including any site-specific environmental impacts, and (3) any other aspects or impacts of the proposed Prohibition Order believed to be relevant.

Pursuant to 10 CFR 303.173 (a) and (d) and 305.5, DOE hereby announces that a public hearing to receive oral presentation of data, views, and arguments of interested persons will be held beginning at 10 a.m., on May 18, 1978, at the Federal Building, Room 140, 601 East 12th Street, Kansas City, Mo. 64106. Any person who has an interest in the subject of the hearing or who is a representative of a group or class of persons which has an interest in the subject of the hearing may make a written request, or a verbal request if confirmed in writing, for an opportunity to make an oral presentation. That request should be directed to Jane E. Miller, DOE Region VII, 324 East 11th Street, Kansas City, Mo. 64106, 816-374-3116. The request should be received before 4:30 p.m., May 11, 1978. The request should describe the person's interest in the issue(s) involved; if appropriate, it should state why the person is an appropriate representative of the group or class of persons which has such an interest; it should give a concise summary of the proposed oral presentation and a phone number where the person may be contacted through May 17, 1978. Speakers should submit ten (10) copies of their oral presentation if possible, unless such presentation is less than five (5) pages, in which case only one copy is required, to Jane E. Miller, Department of Energy, Region VII, 324 East 11th Street, Kansas City, Mo. 64106, before 4:30 p.m., May 16, 1978. Speakers will be contacted by a DOE representative before 4:30 p.m., May 15, 1978, to confirm receipt of the written request.

Detailed technical data, views, and arguments should be contained in a written submission in support of the oral presentation. The oral presentation itself should be a summary of those written comments.

While DOE will endeavor to provide adequate opportunity to all who desire

to speak, DOE reserves the right to limit the number of persons to be heard at the hearing, to schedule their respective presentations and to establish the procedures governing the conduct of the hearing. The length of time allocated to each presentation may be limited on the basis of the number of persons requesting to be heard. DOE will prepare an agenda that shall provide, to the extent possible, for the presentation of all relevant data, views, and arguments.

A DOE official will be designated to preside at the hearing which will not be a judicial or evidentiary hearing. During oral presentations only those conducting the hearing may ask questions. There will be no cross-examination. At the conclusion of all initial oral presentations, each person who has made an oral statement will be given the opportunity, if he or she so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any interested person may submit written questions to the presiding officer to be asked of any person making an oral presentation. The presiding officer will determine whether to ask the question, having first determined whether the question is relevant, and whether adequate time may be afforded for an answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and it, together with any written comments submitted in the course of the hearing, will be retained by DOE and made available for inspection and copying at the Freedom of Information Reading Room, Room 2107, Federal Building, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461, and the DOE Regional Office, 324 East 11th Street, Kansas City, Mo. 64106, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Anyone may purchase a copy of the transcript from the reporter.

Interested persons are invited to submit written comments consisting of data, views, and arguments with respect to these proposed prohibition orders to Public Hearing Management, Box TC, Department of Energy, Room 2313, 2000 M Street NW., Washington D.C. 20461.

Comments and other documents submitted to DOE Public Hearing Management should be identified on the outside of the envelope in which they are transmitted and on the document itself with the designation "Proposed Prohibition Orders for the Chanute Plant Installations." Fifteen copies should be submitted.

All written comments received by 4:30 p.m., June 5, 1978, all oral presen-

tations, and all other relevant information submitted to or available to DOE will be considered by DOE prior to issuance of a prohibition Order.

Any information or data considered to be confidential by the person furnishing it must be so identified and submitted in writing in accordance with 10 CFR 303.9(f). DOE reserves the right to determine the confidential status of the information or data and to treat it in accordance with that determination.

Copies of the regulations implementing section 2 (a) and (b) of ESECA (10 CFR Parts 303 and 305) are available from the following DOE Regional Offices:

Region, Address, and Phone

- I—Robert W. Mitchell, Acting Regional Representative, 150 Causeway Street, Room 700, Boston, Mass. 02114, 617-223-3701.
- II—William W. Wood, Acting Regional Representative, 26 Federal Plaza, Room 3206, New York, N.Y. 10007, 212-264-1021.
- III—Bernard Snyder, Acting Regional Representative, 1421 Cherry Street, Room 1001, Philadelphia, Pa. 19102, 215-597-3390.
- IV—Donald Allen, Acting Regional Representative, 1655 Peachtree Street NE., 8th Floor, Atlanta, Ga. 30309, 404-526-2837.
- V—William Peterson, Acting Regional Representative, Federal Office Building, 175 West Jackson Boulevard, Room A-333, Chicago, Ill. 60604, 312-353-0540.
- VI—Curtis E. Carlson, Acting Regional Representative, P.O. Box 35228, 2626 West Mockingbird Lane, Dallas, Tex. 75235, 214-749-7345.
- VII—James R. Newman, Acting Regional Representative, 324 East 11th Street, Kansas City, Mo. 64106, 816-374-2061.
- VIII—C. Dale Eriksen, Acting Regional Representative, P.O. Box 26247, Belmar Branch, 1075 South Yukon Street, Lakewood, Colo. 80226, 303-234-2420.
- IX—William C. Arntz, Acting Regional Representative, 111 Pine Street, San Francisco, Calif. 94111, 415-556-7216.
- X—Jack B. Robertson, Acting Regional Representative, 1992 Federal Building, 915 Second Avenue, Seattle, Wash. 98174, 206-442-7280.

MFBI PROHIBITION ORDER CANDIDATE IDENTIFICATION AND SELECTION METHODOLOGY

Major fuel burning installation (MFBI) prohibition order candidates are selected in a two-part process which commenced in 1975 with an identification of the potential universe of MFBI's in order to determine which MFBI's might be subject to such orders. Analysis of individual potential MFBI prohibition order candidates selected from this universe proceeds on a continuous basis.

I. DETERMINATION OF CANDIDATE UNIVERSE

By FEDERAL REGISTER notice of March 20, 1975 (40 FR 12706) MFBI's with design firing rates in excess of 100 MMBTU's per hour were required

to provide basic identifying information so that the universe of potential prohibition order candidates could be determined. (Regulations published on May 9, 1975 (40 FR 20463) adopted the 100 MMBTU's per hour design firing rate as the minimum size MFBI that would be eligible for a prohibition order.)

On April 18, 1975 (40 FR 17328), notice was published in the *FEDERAL REGISTER* indicating that a questionnaire entitled "Major Fuel Burning Installation Coal Conversion Report" (Form FEA C-602-S-O), would be addressed to each then known MFBI for the purpose of obtaining additional information needed to help determine whether the MFBI's would be candidates for prohibition orders. Questionnaires were mailed to those MFBI's who responded to the March 20, 1975, *FEDERAL REGISTER* notice and to other MFBI's identified through data provided by the regional personnel of the Federal Energy Administration, the Environmental Protection Agency (EPA), by other Federal agencies, and through contact with trade associations. A total of 822 parent companies responded to the survey, identifying 3,482 installations and 6,289 individual units.

The initial survey provided historical information on quantity and characteristics of fuel use and preliminary pollution control data relative to the facilities in question.

Compilation and evaluation of this information led to development of a supplemental questionnaire (Form FEA C-602-S-1) to obtain data on the financial condition of owners of MFBI's, including information from which the effects of a prohibition order on an individual company basis could be ascertained. Form FEA C-602-S-1 was also designed to provide a basis for subsequent analysis of the MFBI in terms of financial capability, additional capital investment costs resulting from a prohibition order, operating cost differentials, and coal transportation availability.

An initial mailing of this supplemental questionnaire was sent in June 1976 to owners of 161 installations encompassing 281 individual units. Most of the supplemental questionnaires (involving 138 installations and covering 246 individual units) were sent to owners of MFBI's identified in the first questionnaires (Form FEA C-602-S-O) as having coal burning capability, and which in 1974 burned at least 150,000 barrels of oil or 921,000,000 cubic feet of natural gas, or a Btu equivalent combination. Those MFBI's identified on the first questionnaires (Form FEA C-602-S-O) as having coal burning capability but which reported fuel consumption of less than 150,000 barrels of oil, or 921,000,000 cubic feet of natural gas, or a Btu equivalent

combination in 1974, were not required to complete the supplemental questionnaires at that time, but were deferred in view of the limited resources available to the program office to review the anticipated responses. These MFBI's may be required to submit supplemental information in the future. The 246 individual MFBI's were considered first because of their potential for large fuel savings.

Additional supplemental questionnaires were sent to owners of 23 installations consisting of 35 individual units were the initial questionnaires (Form FEA C-602-S-O) had indicated the MFBI's intention to discontinue use of coal.

In September 1976, following receipt of responses to the supplemental questionnaire, the program office consulted with EPA to obtain their best estimate as to the means by which each reporting MFBI could burn coal while complying with all applicable air pollution control requirements. At that time, EPA indicated whether particular MFBI's would require upgrading or installation of electrostatic precipitators, installation of flue-gas desulfurization devices, or whether the MFBI could burn coal that would conform to air pollution control requirements without pollution control equipment.

II. SITE SPECIFIC ANALYSIS.

DOE has continued to collect supplemental data relating to the 161 subject sites and is conducting, on a continuing basis, technical analyses to determine whether individual MFBI's can be considered as potential candidates for issuance of a notice of intention (NOI) to issue a prohibition order. As part of its individual analyses, DOE considers the following data regarding an MFBI's potential amenability to receipt of an NOI:

(a) The expected remaining useful life of the combustor, including both DOE's and the potential candidate's estimates;

(b) The combustor unit's capacity;

(c) Fuel consumption for 1975 and for other years, where available;

The last year coal was burned by the combustor;

(e) Costs of converting to coal, including pollution control equipment costs, of any, that would be required (potential candidate's and DOE's estimates);

(f) Type of pollution control equipment, if any, required (potential candidate's and EPA's estimates); and

(g) Other relevant factors, such as the percent of sulfur content in coal that would be required to insure compliance with environmental standards.

In June 1977, prior to the issuance of several prohibition orders to MFBI's the program office published in the *FEDERAL REGISTER* notices setting forth the methodology employed

in selection the initial list of MFBI candidate facilities. The number of potential candidate facilities at the time was a function of two factors: First, the number of potential candidates was limited so as to be commensurate with the resources available to the program office, and second, the largest consumers of oil and natural gas which were potentially convertible to coal as their primary energy source were to be analyzed first, while consideration of the remainder of the original coal-capable universe was deferred.

In June 1977 certain MFBI's were specifically deferred from consideration as potential candidates because (a) their remaining useful life on January 1, 1978, was less than 1 year; (b) their utilization factor was less than 20 percent; (c) space required for coal use at the installation was inadequate or unavailable; (d) since filing the FEA C-602-S-O, the MFBI had been converted to coal as its primary energy source or the owner had certified that it would be so converted in the near future; (e) the MFBI had used significantly less than 2×10^{12} BTU's of oil or natural gas in the latest year for which fuel data was available, and which if converted to coal, would use less than 100,000 tons of coal annually.

Certain other MFBI's were deferred for other reasons, e.g. the proposed findings required by 10 CFR 305.4 could not be established with the information available at that time. Those MFBI's which were not deferred for any of the foregoing reasons were considered as potential candidates for prohibition orders. NOI's were issued where proposed findings were made and prohibition orders were issued to those MFBI's for which the proposed findings were perfected.

Since June 1977 the program office has continued to analyze individual MFBI's which were deferred at that time. All MFBI's which have previously received NOI's have been eliminated from further consideration, whether or not a prohibition order was subsequently issued. Those MFBI's which are now being reviewed as potential candidates include:

(a) All units which have not previously received NOI's and which were explicitly deferred from consideration in the June 1977 methodology;

(b) All units deferred from consideration as potential candidates for various technical or other reasons not specifically mentioned in the June 1977 methodology.

DOE has determined that MFBI's to which the following criteria are applicable are appropriately deferred from consideration as prohibition order candidates at this time:

(a) The remaining useful life of the MFBI on January 1, 1979, will be less than 1 year;

(b) The utilization factor of the unit is less than 20 percent;

(c) The space required for coal use at the installation is inadequate or unavailable;

(d) Since filing the original questionnaire (FEA C-602-S-O), the MFBI has been converted to coal as its primary energy source, or the owner has certified that the unit will be so converted in the near future;

(e) Compliance with a prohibition order by the MFBI would result in the use of less than 60,000 tons of coal per year.

Items (a) or (b) above would prevent DOE from finding that the burning of coal by the MFBI would be practicable. With respect to criteria (a) specifically, DOE assumes a 40-year useful life for a combustor, based on general industry averages, unless the owner reports a longer useful life. DOE has decided not to analyze MFBI's that have already converted to coal since the basic purposes of ESECA have already been accomplished by such conversions and DOE has concluded that its resources would be better spent by concentrating on those MFBI's which are not now burning coal as their primary energy source and which do not plan to convert within the near future. DOE has deferred MFBI's which do not have the potential for large savings of natural gas or petroleum.

If, upon consideration, DOE determines through analysis of the summary information submitted, that issues have been raised which will require further investigation, DOE has in the past conducted, and will continue in the future to conduct site specific visits. Site visits are employed in circumstances in which large discrepancies are observed to exist between DOE's and the MFBI's cost estimate, where unusual technical problems have been presented by the MFBI with respect to using coal and when other disparities exist between the information submitted to DOE by the MFBI and that developed independently by DOE. Information developed during a site visit may serve either as evidence that the combustor should be eliminated or deferred or that the situation warrants DOE's continuation of its analysis.

For MFBI's not eliminated through any of the above criteria, DOE calculates the net operating cost differential between using coal as the MFBI's primary energy source and using either natural gas or petroleum products.

A. *Calculation of net operating cost differential.* The net operating cost differential consists of the sum of: (1) Annualized increased capital investment costs required for conversion to coal, (2) differences in operating and maintenance costs (including the fuel cost differential), and (3) the potential

tax consequences attendant to conversion. Initially, DOE performs calculations in determining the net operating cost differential, using cost figures supplied by the MFBI and using DOE's own estimates. When the MFBI's figures are within a reasonable range of DOE's estimates, DOE generally accepts the MFBI's figures. Gross discrepancies are examined in more detail by DOE to determine the reasonableness of the differing estimates and to reconcile differences.

The elements of the three parts of the net operating cost differential are explained below:

1. *Capital investment costs.* The primary element in this part of the cost of equipment acquisition and refurbishment required for conversion to coal, including refurbishment or acquisition of pollution control equipment. In determining the estimated annual increase in fixed costs to the owner resulting from such capital investment, DOE calculates the annual depreciation of equipment costs over the expected remaining useful service life of the MFBI (including consideration of the investment tax credit) and adds the estimated annual cost of capital.

Annual depreciation is calculated as follows:

a. Determine cost of new equipment (including pollution control equipment) minus investment tax credit of 10 percent.

b. Divide the figure in a, above, by the expected remaining useful life of the MFBI after conversion is completed.

DOE presumes that the MFBI's determination of remaining useful life is correct if it results in a total useful life of at least 40 years. Otherwise, DOE will conduct a more detailed examination of the MFBI.

Calculation of the approximate annual cost of capital is as follows:

a. New and refurbished equipment costs minus the investment tax credit, plus

b. Twice the cost of land acquisitions required for conversions to coal burning.

c. The total of a. and b. is divided by 2 and then multiplied by a 10 percent interest rate.

2. *Operating and maintenance costs.* The primary factor considered in this calculation is the annual fuel cost differential which represents the difference between operating the MFBI with coal as its primary energy source in lieu of petroleum products or natural gas. (If the current supply of natural gas to the MFBI is curtailed, then the calculation of the fuel cost differential does not include natural gas as part of the MFBI's current fuel use to the extent of that curtailment. In such cases the NOCD is calculated on the basis of actual fuel usage.) DOE has generally accepted the coal price

reported by the MFBI's. If DOE considered the stated price to be unreasonable, it further examined coal prices based upon an analysis of likely coal sources. Projected coal use after conversion was calculated by converting latest annual fuel use data to its BTU equivalent for coal.

Determination of the differential relating to labor costs and the differential relating to other operating and maintenance costs was based upon estimates supplied by the MFBI's.

3. *Potential tax effects.* Federal and State tax rates have been applied to the net operating cost differential to determine maximum potential tax effects resulting from a Prohibition Order.

If the NOCD for an MFBI is positive, i.e., projects an increase in annual costs, then a calculation of the cost per barrel of oil saved is performed by dividing the NOCD by the number of barrels of oil actually used on an annual basis (or, if the MFBI was a natural gas user, the number of barrels of oil which would be required to replace the gas use on an equivalent BTU basis). This figure (cost per barrel of oil saved) is then considered in terms of the number of barrels of oil and/or MCF of natural gas that would be saved by issuance of a Prohibition Order, the effect of the NOCD on the MFBI owner's operating expenses, as well as various environmental and other factors in reaching the final determination as to which candidates should receive an NOI.

It is to be noted that much of the information used by DOE to make its practicability findings is arguably confidential under 18 U.S.C. 1905. Therefore, such information has not appeared in the Appendix to the NOI. The calculations have been explained in each case and the data are available to the representatives of the owner of the MFBI.

The decision whether to issue an NOI is made as the calculations and analyses described above are completed. Following the issuance of an NOI are hearings and a comment period designed to elicit data, views and arguments pertinent to the findings ESECA requires DOE to make prior to the issuance of a Prohibition Order. If no reason not to issue an order is presented to or discovered by DOE, a Prohibition Order is issued to the candidate.

Any questions regarding this Notice should be directed to DOE National Headquarters as follows: Mr. Walter Romanek, Director, Division of Coal Utilization, Department of Energy, Code OCU (Prohibition Orders: Ash Grove Cement Co., Chanute Plant, Chanute, Kansas Installations, Docket Numbers OCU-1112-1 and 1112-2), Washington, D.C. 20461, telephone 202-254-3910.

(Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 791 et seq.), as amended by Pub. L. 95-70; Federal Energy Administration Act of 1974 (15 U.S.C. 761 et seq.), as amended by Pub. L. 95-70; Department of Energy Organization Act (Pub. L. 95-91); E.O. 11790 (39 FR 23185); E.O. 12009 (42 FR 46267).)

Issued in Washington, D.C. April 27, 1978.

BARTON R. HOUSE,

Assistant Administrator, Fuels Regulation, Economic Regulation Administration.

APPENDIX

PROPOSED FINDINGS AND RATIONALE FOR NOTICE OF INTENTION TO ISSUE PROHIBITION ORDERS

ESECA and DOE regulations implementing the statute (10 CFR 303 and 305) require DOE to make certain findings before issuing a Prohibition Order to a major fuel burning installation (MFBI).¹ DOE's proposed findings are set out below with respect to the MFBI's named below. Supporting rationale and conclusions are also set forth.

¹Effective October 1, 1977, the responsibility for implementing ESECA was transferred by Executive Order No. 12009 pursuant to the Department of Energy Organization Act, from the Federal Energy Administration (FEA) to the Department of Energy (DOE).

Docket No.	Owner	Installation	Unit No.	Location
OCU-1112-1	Ash Grove Cement Co.	Chanute Plant	1	Chanute, Kans.
OCU-1112-2	do	do	2	Do.

These findings, which are now proposed by DOE, are based on the information that has been provided to and developed by DOE prior to the issuance of this Notice of Intention (NOI) to issue Prohibition Orders.

Ash Grove Cement Co. shall be referred to as the "owner" and as "Ash Grove." The Chanute Plant Units 1 and 2 shall be referred to as the "MFBI's" and as "Chanute 1 and 2."

I. CAPABILITY AND NECESSARY PLANT EQUIPMENT TO BURN COAL

DOE proposes to find that on June 22, 1974, Chanute 1 and 2 had, or thereafter acquired or were designed with, the capability and necessary plant equipment to burn coal. This proposed finding is based on the facts and interpretations stated below:

A. Ash Grove, in a Major Fuel Burning Installation Coal Conversion Report, Section II, Questions 6, and 12-14, (Form FEA C-602-S-0) dated May 20, 1975, indicated that the MFBI's had in place on June 22, 1974, kilns that were capable of burning coal. The kilns had been designed and constructed or modified to burn coal as their primary energy source, notwithstanding the fact that on June 22, 1974, and thereafter, these MFBI's may not have burned coal as their primary energy source.

B. Based on information Ash Grove filed with DOE dated July 28, 1976, and other information available to DOE, the following plant equipment and facilities at Chanute 1 and 2 would have to be acquired or refurbished in order for these MFBI's to burn coal as their primary energy source:

1. Front-end Loader.
2. Additional Storage.
3. Upgraded Precipitator.

C. DOE proposes to find that on June 22, 1974, Chanute 1 and 2 had or thereafter acquired all other significant plant equipment and facilities associated with the burning of coal.

D. Within the meaning of ESECA and the regulations promulgated pursuant thereto, the absence of any one or a combination of the equipment or facilities listed in paragraph B, above, is not grounds for concluding that Chanute 1 and 2 lacked the capability

and necessary plant equipment to burn coal on June 22, 1974, or were not designed with, or did not thereafter acquire, such capability.

II. THE BURNING OF COAL IN LIEU OF NATURAL GAS OR PETROLEUM PRODUCTS IS PRACTICABLE AND CONSISTENT WITH THE PURPOSES OF ESECA.

DOE proposes to find that the burning of coal in lieu of petroleum products or natural gas at Chanute 1 and 2 is practicable and consistent with the purposes of ESECA. This proposed finding is based upon an analysis by DOE of the fuel consumption of these kilns for the period 1973-1975, the remaining useful service life of the kilns after conversion, the net operating cost differential that would result from compliance with Prohibition Orders, as well as the facts and interpretations referenced below:

A. *The burning of coal is practicable—1. Anticipated fuel supplies, curtailment of natural gas supply.* Based on information obtained from the Federal Energy Regulatory Commission, the natural gas supplier, and in certain cases, the owner, DOE believes that the MFBI's will experience a substantial curtailment of their present supply of natural gas. This curtailment will result in their increased reliance on alternate fuels.

2. *Costs associated with burning coal—a. Capital investment costs.* The total estimated initial capital investment costs, including financing costs, that would result from the acquisition and refurbishment of equipment and facilities associated with the burning of coal at Chanute 1 and 2 have been determined.

This determination was based on existing DOE information and analysis as well as information filed with DOE by the owner. Approximate costs to comply with applicable environmental protection requirements have also been considered, including the cost of compliance with the air pollution control requirements of the Clean Air Act.

b. *Annual operating and maintenance costs.* The expected increase in operating and maintenance costs, exclusive of fuel costs, that would result from the burning of

coal has been calculated based on information supplied by the owner or otherwise acquired by DOE.

c. *Fuel costs.* Based on an analysis of annual fuel consumption and fuel cost information supplied by the owner and/or, in appropriate circumstances, upon DOE's fuel cost estimates, DOE has determined that the burning of coal in lieu of natural gas at Chanute 1 and 2 will result in an increase in annual fuel costs.

d. *Net operating cost differential.* Based on the factors stated in paragraphs A.2.a.-c., above, as well as the expected remaining useful life of the kilns after conversion, DOE has determined that the net annual operating cost differential ("NOCD") (which represents the difference between operating the kilns with coal and alternate fuel(s) as their primary energy source), resulting from the conversion of Chanute 1 and 2 will represent an annual cost increase of \$233,140.

3. *Reasonableness of costs of conversion.* The following analysis of the costs of conversion provides the basis for deciding that compliance with the proposed orders is not unreasonable.

In calculating the NOCD, DOE considered the present annual fuel usage. The net annual operating cost increase for these MFBI's resulting from operating on coal as the primary energy source, instead of natural gas, will be approximately \$233,140.

Although conversion to the burning of coal would be expected to increase the costs incurred by Chanute 1 and 2 by \$233,140 per year, DOE proposes to find that such increased cost, per MCF of natural gas saved, is not unreasonable, given the purposes of ESECA. This determination is based on consideration of the substantial potential natural gas savings that would result from conversion to coal. The determination that the costs of burning coal instead of natural gas would not be unreasonable is further supported by consideration of such costs in relation to the expected remaining useful life of the MFBI's, the size and resources of the owner as examined in the following discussion of financial capacity, and the nature of the expected operations of the MFBI's.

The additional costs that would be incurred if DOE were to prohibit the burning of natural gas or petroleum products as the primary energy source at Chanute 1 and 2 would only be incurred for a limited period of time in view of the anticipated availability of natural reserves of and productive capacity for natural gas. These factors point up the likelihood that Chanute 1 and 2 will experience a significant curtailment of its present natural gas supply in the future, so that DOE has concluded that the cost of burning coal in lieu of natural gas is not unreasonable. (Final Report Oil and Gas Resources, Reserves, and Productive Capacities Volumes I and II, Federal Energy Administration, October 1975.)

4. *Financial capability of the owner.—a. Recovery of capital investment.* DOE proposes to find that compliance with Prohibition Orders by Chanute 1 and 2 would be economically feasible. DOE's analysis took into consideration the financial capability of the owner and is based upon the owner's financial position as reported in Dun and

Bradstreet. Where necessary, DOE performed an independent analysis of the owner's financial capability, considering such factors as the owner's current financial statement and the additional capital investment required for the owner to comply with this NOI and all other NOI's which are currently under consideration, as well as additional capital investment costs related to all other outstanding Notices of Intention, to date, if any, to issue Prohibition or Construction Orders, and from all Prohibition or Construction Orders, if any, issued to date under authority of Section 2(a) and (c) of ESECA to MFBI's owned by Ash Grove. DOE related these additional capital investment costs to the total capitalization of Ash Grove and the remaining useful life after conversion of Chanute 1 and 2.

DOE does not consider the effect of the added capital investment costs to represent an unreasonable burden given the financial capabilities of Ash Grove to assume such costs.

b. *Total annual costs associated with conversion.* The total estimated annual increase in costs (amortized increased capital investment costs and other costs, exclusive of fuel costs) associated with the burning of coal as opposed to natural gas attributable to compliance with this NOI and all other NOI's which are currently under consideration has been determined. DOE has also taken into consideration total annual costs resulting from compliance with all other outstanding Notices of Intention, to date, if any, to issue Prohibition or Construction Orders, and from all Prohibition or Construction Orders, if any, issued to date under authority of Section 2(a) and (c) of ESECA to Ash Grove MFBI's.

Ash Grove's total annual costs after conversion will increase by \$233,140.

B. *Consistency with the purposes of ESECA.* Because the issuance of Prohibition Orders to Chanute 1 and 2 will discourage the use of natural gas or petroleum products and encourage the increased use of coal, DOE proposes to conclude that this action would be consistent with the purpose of ESECA to provide a means to assist in meeting the essential needs of the United States for fuels.

On the basis of the environmental analysis which DOE is required to conduct prior to issuance of a Notice of Effectiveness of a Prohibition Order, as well as the necessity for these MFBI's to comply with the Clean Air Act and other applicable environmental protection requirements, DOE proposes to conclude that Prohibition Orders to Chanute 1 and 2 would be consistent with the purposes of ESECA to provide for a means to assist in meeting the essential needs of the United States for fuels in a manner which is consistent, to the fullest extent practicable, with existing national commitments to protect and improve the environment.

III. *Coal and coal transportation facilities will be available to these MFBI's during the period until December 31, 1984.*

A. *Coal availability.* 1. *National coal reserves.* United States coal reserves are more than sufficient to supply national needs for the foreseeable future. U.S. Department of the Interior, Bureau of Mines (BOM) data show a demonstrated coal reserve base of over 400 Billion tons, over half of which is currently technically and economically recoverable (Demonstrated Coal Reserve Base of the United States, by Sulfur Category, on January 1, 1974, Bureau of Mines (May

1975) [hereafter "BOM Survey"]]. Within these recoverable reserves approximately 100 billion tons contain 1 percent or less sulfur by weight. To determine when certain quantities of these reserves are expected to be available, DOE has examined several studies referenced herein, which together provide the best current evidence as to coal availability for the period ending December 31, 1984.

2. *National coal production and demand.* The comparison, stated below, of estimated national coal production, national coal demand, and the total tonnage of uncommitted planned national coal production (derived from responses to a survey of coal producing companies) shows that there should be sufficient production of coal to meet the total national demand through 1980. Beyond 1980, DOE does not have data fully developed for new production plans because few coal producers have firm expansion plans that extend that far into the future. The statistics supporting more recent mine developments and enumerating updated data are currently in the process of revision.

a. *National coal production.* It is conservatively estimated that it will be possible to produce coal nationally in at least the following quantities:

Year:	Production potential (million tons)
1978.....	791.6
1979.....	851.4
1980.....	911.7
1981.....	960.0
1982.....	994.3
1983.....	1,017.4
1984.....	1,028.7
1985.....	1,029.6

The figures shown above are derived from FEA's Coal Mine Expansion Study (May 1976). This study demonstrates that most coal producers did not have firm or accurate plans for new capacity additions beyond 1980. The 1985 projection, therefore, tends to underestimate actual production potential. Another FEA study, "Availability of Potential Coal Supply Through 1985 by Quality Characteristics," August 1976 (hereafter "Coal Market Survey") and a DOE study, "Coal Availability by Characteristics for Fuel Conversion Orders," April 17, 1978, indicate current plans for nationwide production of uncommitted coal as follows:

Year:	Production (million tons)
1978.....	124.3
1979.....	243.1
1980.....	293.3
1981.....	350.0
1982.....	369.9
1983.....	396.2
1984.....	475.5
1985.....	544.9

b. *National coal demand exclusive of ESECA prohibition order demand.* The estimated national demand, excluding any increased demand resulting from DOE action under the authority of Section 2(a) of ESECA, is as follows (FEA 1976 National Energy Outlook):

Year:	Demand (million tons)
1978.....	730
1979.....	764
1980.....	799
1981.....	842
1982.....	887
1983.....	935
1984.....	985
1985.....	1,040

c. *National ESECA prohibition order demand.* The estimated potential demand

for coal resulting from this NOI, from all other currently projected industrial candidates for NOI's, from all other outstanding Notices of Intention to issue Prohibition Orders to date, and from all Prohibition Orders issued to date under authority of Section 2(a) of ESECA is approximately the following (Coal and Transportation Availability for Major Fuel Burning Installations Coal Conversion Orders: Methods and Approach, May 20, 1977, as amended April 10, 1978) (hereafter "Methods Report"):

Year:	Demand (million tons)
1978.....	10,050
1979.....	14,492
1980.....	21,064
1981.....	23,607
1982.....	30,043
1983.....	30,043
1984.....	30,043

3. *Characteristic coal production and demand.* FEA's "Coal Market Survey" identifies coal of specific quality characteristics available for use at these MFBI's. The survey is based on data from 31 mining companies that supplies useful information on 96 mining units. Responses from these companies identified planned production of coal which was not committed to a specific buyer. For those companies which did not respond to the survey, FEA estimated their uncommitted planned production based on their 1974 production.

a. *Characteristic coal requirements for these MFBI's.* DOE has determined that kilns of the type used at Chanute 1 and 2 will be able to burn coal of the following characteristics and comply with all applicable air pollution control requirements.

Btu's/lb.—12,500 min.
Ash—12% max.
Volatile—33% min.
Ash softening temp.—2,200 (°F) min.
Sulfur—2-3% max. (approx.)

b. *Characteristic coal demand from these MFBI's.* The potential demand for coal, of the type described above, which would be used by these MFBI's is estimated to be as follows:

Year:	Demand (1,000 tons/yr)
1980 (and after).....	72.74

c. *National planned production, characteristic col.* DOE's "Method Report" has determined that coal of the type described in paragraph A.3.a., above, is uncommitted to a specific buyer and will be potentially available to these MFBI's in a nationwide market as follows:

Year:	Production (1,000 tons)
1978.....	124,300
1979.....	243,100
1980.....	293,300
1981.....	350,000
1982.....	369,900
1983.....	396,200
1984.....	475,500

d. *National ESECA prohibition order demand for coal, regardless of characteristics.* The national planned production of characteristic coal, as stated in paragraph A.3.c., above, exceeds potential demand for coal regardless of characteristic expected from this NOI, from all other currently projected industrial candidates for NOI's from all other outstanding notices of intention to issue prohibition orders to date, and from all prohibition orders issued to date under authority of section 2(a) of ESECA. Nation-

al ESECA prohibition order demand as previously stated in paragraph A.2.c., above, is not more than the following ("Methods Report"):

Year:	Demand (thousand tons)
1978.....	10,050
1979.....	14,492
1980.....	21,064
1981.....	23,607
1982.....	30,043
1983.....	30,043
1984.....	30,043

e. *Regional planned production, characteristic coal.* Coal with the characteristics described in paragraph A.3.a., above, is uncommitted and will be potentially available to these MFBI's (in a probable regional supply/demand relationship related to the location of these MFBI's) from BOM Districts 9, 10, 11, 12, 14, and 15 as follows ("Methods Report"):

Year:	Production (thousand tons)
1978.....	37,948
1979.....	77,249
1980.....	88,805
1981.....	106,335
1982.....	112,249
1983.....	119,974
1984.....	146,866

f. *Regional ESECA prohibition order demand for coal, regardless of characteristic.* The expected regional production of characteristic coal, as stated in paragraph A.3.e., above, exceeds the potential demand for coal regardless of characteristic from BOM Districts 9, 10, 11, 12, 14, and 15 expected to result from this NOI, from all other currently projected industrial candidates for NOI's, from all other outstanding notices of intention to issue prohibition orders to date, and from all prohibition orders issued to date under authority of section 2(a) of ESECA. This potential regional demand is estimated in DOE's "Methods Report" to be no more than the following:

Year:	Demand (thousand tons)
1978.....	807
1979.....	1,216
1980.....	1,654
1981.....	2,306
1982.....	2,306
1983.....	2,306
1984.....	2,306

g. *Regional ESECA prohibition order demand for coal by sulfur characteristic.* The potential regional demand for coal from BOM Districts 9, 10, 11, 12, 14, and 15 with a >2.21 percent sulfur content (which includes the 3.0 percent maximum sulfur content described in paragraph A.3.a., above) resulting from this NOI, from all other currently projected industrial candidates for NOI's, from all other outstanding notices of intention to issue prohibition orders to date, and from all prohibition orders issued to date under authority of section 2(a) of ESECA is estimated in DOE's "Methods Report" to be no more than the following:

Year:	Demand (thousand tons) percent sulfur > 2.21
1978.....	807
1979.....	1,216
1980.....	1,558
1981.....	1,728
1982.....	1,728
1983.....	1,728
1984.....	1,728

The regional planned production of coal stated in paragraph A.3.e., above, with the characteristics described in paragraph A.3.a., above, far exceeds this potential ESECA regional demand for coal by sulfur characteristic.

4. State or local laws.

DOE has found no state or local laws or policies limiting the extraction or utilization of coal that would adversely affect these production figures, and none have been brought to DOE's attention.

5. Conclusion.

DOE's "Methods Report" has identified nationally and in BOM Districts 9, 10, 11, 12, 14, and 15 uncommitted coal production that meets the requirements of Chanutte 1 and 2 as described in paragraph A.3.a., above. DOE, therefore, proposes to find that this uncommitted coal exists in amounts sufficient in any year to meet the estimated additional demand for coal, both nationally and from these Districts, resulting from this NOI, from all other currently projected industrial candidates for NOI's from all other outstanding notices of intention to issue prohibition orders to date, and from all prohibition orders issued to date under authority of section 2(a) of ESECA.

Coal for these MFBI's will probably be bought from producers according to regional supply/demand relationships related to the MFBI's location from BOM Districts 9, 10, 11, 12, 14, and 15. DOE observes, however, that these MFBI's could purchase coal in other markets as such production becomes available. "The Feasibility of Considering Expanded Use of Western Coal by Midwestern and Eastern Utilities in the Period 1978 and Beyond," School of Engineering, University of Pennsylvania, November 7, 1975.)

B. Coal transportation.

1. Location of MFBI's and coal supply.

Based on a DOE study, "Coal Transportation Availability Report," January 1978 (hereafter "Transportation Availability Report"), coal for Chanutte 1 and 2 would probably come from Bureau of Mines (BOM) District 15 as a primary source and from BOM District 10 as an alternate source. Other sources of complying coal are available within the United States. However, the following analysis of transportation availability is based on the most likely, or primary, route from the BOM supply areas stated above, as well as on two alternate routes.

2. Route of coal shipment.

The primary route for coal delivery to Chanutte 1 and 2 is to originate coal in the Pittsburg area, Cherokee County, Kans., in BOM District 15. The Atchison, Topeka and Santa Fe (AT&SF) would deliver to Chanutte 1 and 2. The total rail distance is approximately 54 miles.

The alternate route for coal delivery from the primary supply area would originate coal in the Moberly area in Randolph County, Mo., in BOM District 15. Norfolk and Western Railroad (N&W) would move the coal to Kansas City, MO., where the AT&SF would pick up the coal and deliver it to Chanutte 1 and 2 via Ottawa, Kans. The total rail mileage is approximately 245 miles.

The alternate route for coal delivery from the alternate supply area would originate coal in Carlinville, Ill., in BOM District 10 from mines served by the Illinois Central Gulf (ICG). ICG would move the coal to St. Louis, Mo., where the St. Louis-San Francisco (SLSF) would pick it up and move it west

across Missouri via Springfield, Mo. to Fort Scott, Kans. The SLSF would then move the coal south to Girard, Kans., where AT&SF would pick it up and deliver it to Chanutte 1 and 2. The total rail mileage is approximately 467 miles.

3. Originating trunk carrier.

The AT&SF, which would originate coal from the primary source, has approximately 5,214 hopper cars with an average capacity of 83 tons. Using an average number of 20 deliveries per year per 83-ton car, the AT&SF might require 44 additional cars by 1980 to handle the increased demand expected from Chanutte 1 and 2. The company has indicated that it foresees no difficulty in handling the additional demand.

The N&W, originator on the alternate route of coal delivery from the primary supply area for Chanutte 1 and 2, has approximately 54,000 hopper cars with an estimated average capacity of 83 tons. Using an average number of 20 deliveries per year per 83-ton car, the N&W would need 44 additional cars by 1980 to handle the increased demand from Chanutte 1 and 2. N&W indicated that the retirements from their hopper fleet are not expected to exceed 1,200 per year and that they have shop capacity to build 1,500 to 5,000 new cars per year, depending on the demand for coal from their supply areas. Shipments would probably be by general train.

The originator of coal for the alternate route from the alternate supply area, ICG, has approximately 12,000 cars with an average capacity of 82 tons. Using an average number of 20 trips per year, the ICG would need 45 additional cars by 1980 to meet the coal demand from Chanutte 1 and 2. ICG has indicated there would be no problems in handling the additional business.

DOE had not found nor has it been informed of any apparent constraints to carrying coal for any originating, alternate, or intermediate carriers should they be used.

4. *Destination carrier and plant facilities.* Freight service in the past, including coal deliveries, have been made to Chanutte 1 and 2 by AT&SF. It is expected that this mode of transportation would be used in the future and that coal receiving, storage, and handling equipment are now in place or can and will be installed prior to the effective date for coal burning.

5. *Conclusion.* Based on the foregoing analysis, DOE proposes to find that coal transportation facilities will be available for the period a Prohibition Order is expected to be in effect since no major constraints to coal delivery over the primary route to Chanutte 1 and 2 presently exist, and alternate routes are available.

[FR Doc. 78-12074 Filed 5-2-78; 8:45]

[3128-01]

ENERGY SUPPLY AND ENVIRONMENTAL COORDINATION ACT

Intention To Issue Prohibition Orders to Certain Major Fuel Burning Installations

The Department of Energy (DOE) hereby gives notice of its intention to issue Prohibition Orders, pursuant to the authorities granted it by section 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of

1974 (ESECA), as amended, and title 10, Code of Federal Regulations (10

CFR), parts 303 and 305 to the following installations:

Docket No.	Owner	Installation	Unit No.	Location
OCU-0514-1	Martin Marietta Corp.	Martin Marietta Cement.	1	Atlanta, Ga.
OCU-0514-2	do	do	2	Do.

DOE hereby also gives notice of the opportunity for oral and written presentation of data, views, and arguments by interested persons regarding the proposed Prohibition Orders.

The proposed orders would prohibit the above-named installations from burning natural gas or petroleum products as their primary energy source.

Prior to issuance of a Prohibition Order to an installation, Section 2(a) of ESECA and 10 CFR 303.36(b) and 305.4(b) require that DOE find that the installation had the capability and necessary plant equipment to burn coal as of June 22, 1974, or thereafter acquired or was designed with the capability and necessary plant equipment to burn coal. A Prohibition Order may not be issued unless DOE can find that the prohibition of the utilization of natural gas or petroleum products as a primary energy source is practicable and consistent with the purposes of ESECA and that coal and coal transportation facilities will be available during the period the Prohibition Order will be in effect. DOE's proposed findings, as well as its proposed conclusions and rationale with respect to these findings, for the above-named installations are set out in the Appendix to this notice. These findings, conclusions, and rationale may be amended as a result of comments received by DOE pursuant to this notice and other information available to DOE. The findings, conclusions and rationale will be included, with any amendments, in any Prohibition Order that is issued.

Upon completion of the proceedings described in this notice, DOE may determine to issue Prohibition Orders to both or either one of the above-named installations. The Prohibition Orders will not become effective, however, until (1) either (a) the Administrator of the Environmental Protection Agency (EPA) notifies DOE, in accordance with Section 2 of the Energy Supply and Environmental Coordination Act of 1974 and Section 112(b) of the Clean Air Act (CAA) Amendments of 1977, that the installations are able to burn coal and to comply with all applicable air pollution control requirements without a delayed compliance order under Section 113(d)(5) of the Clean Air Act, as amended, or (b) if

such notification is not given by EPA, the date that the Administrator of EPA certifies, pursuant to Section 2 of the Energy Supply and Environmental Coordination Act of 1974 and Section 112(b) of the Clean Air Act Amendments of 1977, is the earliest date that the installations will be able to comply with all applicable requirements of the Clean Air Act, as amended, and (2) DOE has considered the environmental impact of making the orders effective, pursuant to 10 CFR 208.3(a)(4) and 305.9, and has served the affected installations with Notices of Effectiveness, as provided in 10 CFR 303.10(b), 303.37(b) and 305.7. The date the Prohibition Order will be effective will be stated in the Notice of Effectiveness.

10 CFR 305.9 requires that, prior to issuance of a Notice of Effectiveness to an installation, DOE shall perform an analysis of the environmental impact of the issuance of such Notice of Effectiveness. That analysis shall result in either (1) issuance of a declaration that the Prohibition Order will not, if made effective by issuance of a Notice of Effectiveness, be likely to have a significant impact on the quality of the human environment, or (2) the preparation by DOE of an environmental impact statement covering significant site-specific impacts that are likely to result from the Prohibition Order and that have not been adequately addressed in the Final Programmatic Environmental Impact Statement or in other official documents made publicly available. If DOE prepares an environmental impact statement covering significant site-specific impacts resulting from making a Prohibition Order effective, the statement shall be prepared and published for comment in accordance with Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.) prior to issuance of a Notice of Effectiveness. Interested persons may request a public hearing pursuant to 10 CFR 303.173 to comment on the contents of a draft environmental impact statement. With respect to comments regarding any impact on air quality that might result from a proposed Prohibition Order, however, it should be recognized that ESECA has assigned to EPA the primary responsibility for analyzing the effect of any such order on the Na-

tion's air quality and for determining the applicable air pollution control requirements that apply to the installation that has been issued an order. It is expected that an installation to which a Prohibition Order is issued may be eligible for a delayed compliance order pursuant to Section 113(d) of the CAA, 42 U.S.C. 7413(d). If EPA decides to issue a delayed compliance order, it must also provide an opportunity for a Public Hearing. Enclosed with the Notice of Effectiveness may be a compliance reporting schedule to insure that the installation will be able to comply with the prohibition of the burning of natural gas or petroleum products as a primary energy source on the effective date specified in the Notice of Effectiveness.

Public comment on the proposal to issue Prohibition Orders to the installations listed above is invited in the form of written and oral presentation of data, views and arguments. Comments should relate to individual docket numbers and should make clear to which docket number the individual comment is addressed.

Comments should address (1) the adequacy and validity of each of the proposed findings and the conclusions and rationale in support of these findings, (2) the environmental impact of making effective a Prohibition Order, including any site-specific environmental impacts, and (3) any other aspects or impacts of the proposed Prohibition Order believed to be relevant.

Pursuant to 10 CFR 303.173 (a) and (d) and 305.5, DOE hereby announces that a public hearing to receive oral presentation of data, views, and arguments of interested persons will be held beginning at 9:30 a.m., on May 16, 1978, at the Atlanta Civic Center, Room 104, 395 Piedmont Avenue NE., Atlanta, Ga. 30308. Any person who has an interest in the subject of the hearing or who is a representative of a group or class of persons which has an interest in the subject of the hearing may make a written request, or a verbal request if confirmed in writing, for an opportunity to make an oral presentation. That request should be directed to Warren Zurn, DOE Region IV, 1655 Peachtree Street NE., Atlanta, Ga. 30309, 404-881-4463. The request should be received before 4:30 p.m., May 9, 1978. The request should describe the person's interest in the issue(s) involved; if appropriate, it should state why the person is an appropriate representative of the group or class of persons which has such an interest; it should give a concise summary of the proposed oral presentation and a phone number where the person may be contacted through May 15, 1978. Speakers should submit ten (10) copies of their oral presentation if possible, unless such presentation is less than five (5) pages, in which case

only one copy is required, to Warren Zurn, Department of Energy, Region IV, 1655 Peachtree Street NE., Atlanta, Ga. 30309, before 4:30 p.m., May 12, 1978. Speakers will be contacted by a DOE representative before 4:30 p.m., May 11, 1978, to confirm receipt of the written request.

Detailed technical data, views, and arguments should be contained in a written submission in support of the oral presentation. The oral presentation itself should be a summary of those written comments.

While DOE will endeavor to provide adequate opportunity to all who desire to speak, DOE reserves the right to limit the number of persons to be heard at the hearing, to schedule their respective presentations and to establish the procedures governing the conduct of the hearing. The length of time allocated to each presentation may be limited on the basis of the number or persons requesting to be heard. DOE will prepare an agenda that shall provide, to the extent possible, for the presentation of all relevant data, views, and arguments.

A DOE official will be designated to preside at the hearing which will not be a judicial or evidentiary hearing. During oral presentations only those conducting the hearing may ask questions. There will be no cross-examination. At the conclusion of all initial oral presentations, each person who has made an oral statement will be given the opportunity, if he or she so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any interested person may submit written questions to the presiding officer to be asked of any person making an oral presentation. The presiding officer will determine whether to ask the question, having first determined whether the question is relevant, and whether adequate time may be afforded for an answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and it, together with any written comments submitted in the course of the hearing, will be retained by DOE and made available for inspection and copying at the Freedom of Information Reading Room, Room 2107, Federal Building, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461, and the DOE Regional Office, 1655 Peachtree Street NE., 8th Floor, Atlanta, Ga. 30309, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Anyone may purchase a copy of the transcript from the reporter.

Interested persons are invited to submit written comments consisting of

data, views, and arguments with respect to these proposed Prohibition Orders to Public Hearing Management, Box TD, Department of Energy, Room 2313, 2000 M Street NW., Washington, D.C. 20461.

Comments and other documents submitted to DOE Public Hearing Management should be identified on the outside of the envelope in which they are transmitted and on the document itself with the designation "Proposed Prohibition Orders for the Martin Marietta Installations." Fifteen copies should be submitted.

All written comments received by 4:30 p.m., June 5, 1978, all oral presentations, and all other relevant information submitted to or available to DOE will be considered by DOE prior to issuance of a Prohibition Order.

Any information or data considered to be confidential by the person furnishing it must be so identified and submitted in writing in accordance with 10 CFR 303.9(f).

DOE reserves the right to determine the confidential status of the information or data and to treat it in accordance with that determination.

Copies of the regulations implementing section 2 (a) and (b) of ESECA (10 CFR Parts 303 and 305) are available from the following DOE Regional Offices:

REGION I

Robert W. Mitchell, Acting Regional Representative, 150 Causeway Street, Room 700, Boston, Mass. 02114, 617-223-3701.

REGION II

William W. Wood, Acting Regional Representative, 26 Federal Plaza, Room 3206, New York, N.Y. 10007, 212-264-1021.

REGION III

Bernard Snyder, Acting Regional Representative, 1421 Cherry Street, Room 1001, Philadelphia, Pa. 19102, 215-597-3390.

REGION IV

Donald Allen, Acting Regional Representative, 1655 Peachtree Street NE., Eighth Floor, Atlanta, Ga. 30309, 404-526-2837.

REGION V

William Peterson, Acting Regional Representative, Federal Office Building, 175 West Jackson Boulevard, Room A-333, Chicago, Ill. 60604, 312-353-0540.

REGION VI

Curtis E. Carlson, Acting Regional Representative, P.O. Box 35228, 2626 West Mockingbird Lane, Dallas, Tex. 75235, 214-749-7345.

REGION VII

James R. Newman, Acting Regional Representative, 324 East 11th Street, Kansas City, Mo. 64106, 816-374-2061.

REGION VIII

C. Dale Eriksen, Acting Regional Representative, P.O. Box 26247, Belmar Branch, 1075 South Yukon Street, Lakewood, Colo. 80226, 303-234-2420.

REGION IX

William C. Arntz, Acting Regional Representative, 111 Pine Street, San Francisco, Calif. 94111, 415-556-7216.

REGION X

Jack B. Robertson, Acting Regional Representative, 1992 Federal Building, 915 Second Avenue, Seattle, Wash. 98174, 206-442-7280.

MFBI PROHIBITION ORDER CANDIDATE IDENTIFICATION AND SELECTION METHODOLOGY

Major fuel burning installation (MFBI) Prohibition Order candidates are selected in a two-part process which commenced in 1975 with an identification of the potential universe of MFBI's in order to determine which MFBI's might be subject to such Orders. Analysis of individual potential MFBI Prohibition Order candidates selected from this universe proceeds on a continuous basis.

I. DETERMINATION OF CANDIDATE UNIVERSE

By FEDERAL REGISTER notice of March 20, 1975 (40 FR 12706) MFBI's with design firing rates in excess of 100 MMBTU's per hour were required to provide basic identifying information so that the universe of potential Prohibition Order candidates could be determined. (Regulations published on May 9, 1975 (40 FR 20463) adopted the 100 MMBTU's per hour design firing rate as the minimum size MFBI that would be eligible for a Prohibition Order.)

On April 18, 1975 (40 FR 17328), notice was published in the FEDERAL REGISTER indicating that a questionnaire entitled "Major Fuel Burning Installation Coal Conversion Report" (Form FEA C-602-S-O), would be addressed to each than known MFBI for the purpose of obtaining additional information needed to help determine whether the MFBI's would be candidates for Prohibition Orders. Questionnaires were mailed to those MFBI's who responded to the March 20, 1975, FEDERAL REGISTER notice and to other MFBI's identified through data provided by the regional personnel of the Federal Energy Administration, the Environmental Protection Agency (EPA), by other Federal agencies, and through contact with trade associations. A total of 822 parent companies responded to the survey, identifying 3,482 installations and 6,289 individual units.

The initial survey provided historical information on quantity and characteristics of fuel use and preliminary pollution control data relative to the facilities in question.

Compilation and evaluation of this information led to development of a supplemental questionnaire (Form FEA C-602-S-1) to obtain data on the

financial condition of owners of MFBI's, including information from which the effects of a Prohibition Order on an individual company basis could be ascertained. Form FEA C-602-S-1 was also designed to provide a basis for subsequent analysis of the MFBI in terms of financial capability, additional capital investment costs resulting from a Prohibition Order, operating cost differentials, and coal transportation availability.

An initial mailing of this supplemental questionnaire was sent in June 1976 to owners of 161 installations encompassing 281 individual units. Most of the supplemental questionnaires (involving 138 installations and covering 246 individual units) were sent to owners of MFBI's identified in the first questionnaires (Form FEA C-602-S-O) as having coal burning capability, and which in 1974 burned at least 150,000 barrels of oil or 921,000,000 cubic feet of natural gas, or a BTU equivalent combination. Those MFBI's identified on the first questionnaires (Form FEA C-602-S-O) as having coal burning capability but which reported fuel consumption of less than 150,000 barrels of oil, or 921,000,000 cubic feet of natural gas, or a BTU equivalent combination in 1974, were not required to complete the supplemental questionnaires at that time, but were deferred in view of the limited resources available to the program office to review the anticipated responses. These MFBI's may be required to submit supplemental information in the future. The 246 individual MFBI's were considered first because of their potential for large fuel savings.

Additional supplemental questionnaires were sent to owners of 23 installations consisting of 35 individual units where the initial questionnaires (Form FEA C-602-S-O) had indicated the MFBI's intention to discontinue use of coal.

In September 1976, following receipt of responses to the supplemental questionnaire, the program office consulted with EPA to obtain their best estimate as to the means by which each reporting MFBI could burn coal while complying with all applicable air pollution control requirements. At that time, EPA indicated whether particular MFBI's would require upgrading or installation of electrostatic precipitators, installation of flue-gas desulfurization devices, or whether the MFBI could burn coal that would conform to air pollution control requirements without pollution control equipment.

II. SITE SPECIFIC ANALYSIS

DOE has continued to collect supplemental data relating to the 161 subject sites and is conducting, on a continuing basis, technical analyses to determine whether individual MFBI's can be considered as potential candi-

dates for issuance of a Notice of Intention (NOI) to issue a Prohibition Order. As part of its individual analyses, DOE considers the following data regarding an MFBI's potential amenability to receipt of an NOI:

(a) The expected remaining useful life of the combustor, including both DOE's and the potential candidate's estimates;

(b) The combustor unit's capacity;

(c) Fuel consumption for 1975 and for other years, where available;

(d) The last year coal was burned by the combustor;

(e) Costs of converting to coal, including pollution control equipment costs, if any, that would be required (potential candidate's and DOE's estimates);

(f) Type of pollution control equipment, if any, required (potential candidate's and EPA's estimates); and

(g) Other relevant factors, such as the percent of sulfur content in coal that would be required to insure compliance with environmental standards.

In June 1977, prior to the issuance of several Prohibition Orders to MFBI's, the program office published in the FEDERAL REGISTER notices setting forth the methodology employed in selecting the initial list of MFBI candidate facilities. The number of potential candidate facilities at that time was a function of two factors: first, the number of potential candidates was limited so as to be commensurate with the resources available to the program office, and second, the largest consumers of oil and natural gas which were potentially convertible to coal as their primary energy source were to be analyzed first, while consideration of the remainder of the original coal-capable universe was deferred.

In June 1977, certain MFBI's were specifically deferred from consideration as potential candidates because (a) their remaining useful life on January 1, 1978, was less than one year; (b) their utilization factor was less than 20 percent; (c) space required for coal use at the installation was inadequate or unavailable; (d) since filing the FEA C-602-S-O, the MFBI had been converted to coal as its primary energy source or the owner had certified that it would be so converted in the near future; (e) the MFBI had used significantly less than 2×10^{12} Btu's of oil or natural gas in the latest year for which fuel data was available, and which if converted to coal, would use less than 100,000 tons of coal annually.

Certain other MFBI's were deferred for other reasons, e.g. the proposed findings required by 10 CFR 305.4 could not be established with the information available at that time. Those MFBI's which were not deferred for any of the foregoing reasons were considered as potential candi-

dates for Prohibition Orders. NOI's were issued where proposed findings were made and Prohibition Orders were issued to those MFBI's for which the proposed findings were perfected.

Since June 1977 the program office was continued to analyze individual MFBI's which were deferred at that time. All MFBI's which have previously received NOI's have been eliminated from further consideration, whether or not a Prohibition Order was subsequently issued. Those MFBI's which are now being reviewed as potential candidates include:

(a) All units which have not previously received NOI's and which were explicitly deferred from consideration in the June 1977 methodology;

(b) All units deferred from consideration as potential candidates for various technical or other reasons not specifically mentioned in the June 1977 methodology.

DOE has determined that MFBI's to which the following criteria are applicable are appropriately deferred from consideration as Prohibition Order candidates at this time:

(a) The remaining useful life of the MFBI on January 1, 1979, will be less than 1 year;

(b) The utilization factor of the unit is less than 20 percent;

(c) The space required for coal use at the installation is inadequate or unavailable;

(d) Since filing the original questionnaire (FEA C-602-S-O), the MFBI has been converted to coal as its primary energy source, or the owner has certified that the unit will be so converted in the near future;

(e) Compliance with a prohibition order by the MFBI would result in the use of less than 60,000 tons of coal per year.

Items (a) or (b) above would prevent DOE from finding that the burning of coal by the MFBI would be practicable. With respect to criteria (a) specifically, DOE assumes a 40-year useful life for a combustor, based on general industry averages, unless the owner reports a longer useful life. DOE has decided not to analyze MFBI's that have already converted to coal since the basic purposes of ESECA have already been accomplished by such conversions and DOE has concluded that its resources would be better spent by concentrating on those MFBI's which are not now burning coal as their primary energy source and which do not plan to convert within the near future. DOE has deferred MFBI's which do not have the potential for large savings of natural gas or petroleum.

If, upon consideration, DOE determines through analysis of the summary information submitted, that issues have been raised which will require further investigation, DOE has in the past conducted, and will contin-

ue in the future to conduct site specific visits. Site visits are employed in circumstances in which large discrepancies are observed to exist between DOE's and the MFBI's cost estimate, where unusual technical problems have been presented by the MFBI with respect to using coal and when other disparities exist between the information submitted to DOE by the MFBI and that developed independently by DOE. Information developed during a site visit may serve either as evidence that the combustor should be eliminated or deferred or that the situation warrants DOE's continuation of its analysis.

For MFBI's not eliminated through any of the above criteria, DOE calculates the net operating cost differential between using coal as the MFBI's primary energy source and using either natural gas or petroleum products.

A. *Calculation of net operating cost differential.* The net operating cost differential consists of the sum of: (1) Annualized increased capital investment costs required for conversion to coal, (2) differences in operating and maintenance costs (including the fuel cost differential), and (3) the potential tax consequences attendant to conversion. Initially, DOE performs calculations in determining the net operating cost differential, using cost figures supplied by the MFBI and using DOE's own estimates. When the MFBI's figures are within a reasonable range of DOE's estimates, DOE generally accepts the MFBI's figures. Gross discrepancies are examined in more detail by DOE to determine the reasonableness of the differing estimates and to reconcile differences.

The elements of the three parts of the net operating cost differential are explained below:

1. *Capital investment costs.* The primary element in this part of the cost of equipment acquisition and refurbishment required for conversion to coal, including refurbishment or acquisition of pollution control equipment. In determining the estimated annual increase in fixed costs to the owner resulting from such capital investment, DOE calculates the annual depreciation of equipment costs over the expected remaining useful service life of the MFBI (including consideration of the investment tax credit) and adds the estimated annual cost of capital.

Annual depreciation is calculated as follows:

a. Determine cost of new equipment (including pollution control equipment) minus investment tax credit of 10 percent.

b. Divide the figure in a., above, by the expected remaining useful life of the MFBI after conversion is completed.

DOE presumes that the MFBI's determination of remaining useful life is

correct if it results in a total useful life of at least 40 years. Otherwise, DOE will conduct a more detailed examination of the MFBI.

Calculation of the approximate annual cost of capital is as follows:

a. New and refurbished equipment costs minus the investment tax credit, plus

b. Twice the cost of land acquisitions required for conversions to coal burning.

c. The total of a. and b. is divided by 2 and then multiplied by a 10-percent interest rate.

2. *Operating and maintenance costs.* The primary factor considered in this calculation is the annual fuel cost differential which represents the difference between operating the MFBI with coal as its primary energy source in lieu of petroleum products or natural gas. (If the current supply of natural gas to the MFBI is curtailed, then the calculation of the fuel cost differential does not include natural gas as part of the MFBI's current fuel use to the extent of that curtailment. In such cases the NOCD is calculated on the basis of actual fuel usage.) DOE has generally accepted the coal price reported by the MFBI's. If DOE considered the stated price to be unreasonable, it further examined coal prices based upon an analysis of likely coal sources. Projected coal use after conversion was calculated by converting latest annual fuel use data to its BTU equivalent for coal.

Determination of the differential relating to labor costs and the differential relating to other operating and maintenance costs was based upon estimates supplied by the MFBI's.

3. *Potential tax effects.* Federal and State tax rates have been applied to the net operating cost differential to determine maximum potential tax effects resulting from a prohibition order.

If the NOCD for an MFBI is positive, i.e., projects an increase in annual costs, then a calculation of the cost per barrel of oil saved is performed by dividing the NOCD by the number of barrels of oil actually used on an annual basis (or, if the MFBI was a natural gas user, the number of barrels of oil which would be required to replace the gas use on an equivalent BTU basis). This figure (cost per barrel of oil saved) is then considered in terms of the number of barrels of oil and/or MCF of natural gas that would be saved by issuance of a prohibition order, the effect of the NOCD on the MFBI owner's operating expenses, as well as various environmental and other factors in reaching the final determination as to which candidates should receive an NOI.

It is to be noted that much of the information used by DOE to make its practicability findings is arguably confidential under 18 U.S.C. 1905. Therefore, such information has not appeared in the appendix to the NOI. The calculations have been explained in each case and the data are available to the representatives of the owner of the MFBI.

The decision whether to issue an NOI is made as the calculations and analyses described above are completed. Following the issuance of an NOI, are hearings and a comment period designed to elicit data, views, and arguments pertinent to the findings ESECA requires DOE to make prior to the issuance of a prohibition order. If no reason not to issue an order is presented to or discovered by DOE, a prohibition order is issued to the candidate.

Any questions regarding this Notice should be directed to DOE National Headquarters as follows: Mr. Walter Romanek, Director, Division of Coal Utilization, Department of Energy, Code OCU (Prohibition Orders: Martin Marietta Corp., Martin Marietta Cement, Atlanta, Ga., Installations, Docket Nos. OCU-0514-1 and 0514-2), Washington, D.C. 20461, telephone 202-254-3910.

(Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 791 et seq.), as amended by Pub. L. 95-70; Federal Energy Administration Act of 1974 (15 U.S.C. 761 et seq.), as amended by Pub. L. 95-70; Department of Energy Organization Act (Pub. L. 95-91); E.O. 11790 (39 FR 23185); EO 12009 (42 FR 46267).)

Issued in Washington, D.C., April 27, 1978.

BARTON R. HOUSE,
Assistant Administrator, Fuels
Regulation, Economic Regulatory
Administration.

APPENDIX

PROPOSED FINDINGS AND RATIONALE FOR NOTICE OF INTENTION TO ISSUE PROHIBITION ORDERS

ESECA and DOE regulations implementing the statute (10 CFR 303 and 305) require DOE to make certain findings before issuing a Prohibition Order to a major fuel burning installation (MFBI).¹ DOE's proposed findings are set out below with respect to the MFBI's named below. Supporting rationale and conclusions are also set forth.

Docket No.	Owner	Installation	Unit No.	Location
OCU-0514-1	Martin Marietta Corp.	Martin Marietta Cement.	1	Atlanta, Ga.
OCU-0514-2	do	do	2	Do.

¹Effective October 1, 1977, the responsibility for implementing ESECA was transferred by Executive Order No. 12009 pursuant to the Department of Energy Organization Act, from the Federal Energy Administration to the Department of Energy.

These findings, which are now proposed by DOE, are based on the information that has been provided to and developed by DOE prior to the issuance of this Notice of Intention (NOI) to issue Prohibition Orders.

Martin Marietta Corp. shall be referred to as the "owner" and as "Martin Marietta." Martin Marietta Cement Units 1 and 2 shall be referred to as the "MFBI's" and as "Martin Marietta 1 and 2."

I. Capability and necessary plant equipment to burn coal. DOE proposes to find that on June 22, 1974, Martin Marietta 1 and 2 had, or thereafter acquired or were designed with, the capability and necessary plant equipment to burn coal. This proposed finding is based on the facts and interpretations stated below:

A. Martin Marietta, in a major fuel burning installation coal conversion report, section II, questions 6, and 12-14 (Form FEA C-602-S-0), dated May 19, 1975, indicated that the MFBI's had in place on June 22, 1974, kilns that were capable of burning coal. The kilns had been designed and constructed or modified to burn coal as their primary energy source, notwithstanding the fact that on June 22, 1974, and thereafter, these MFBI's may not have burned coal as their primary energy source.

B. Based on information Martin Marietta filed with DOE dated July 22, 1976, and other information available to DOE, the following plant equipment and facilities at Martin Marietta 1 and 2 would have to be acquired or refurbished in order for these MFBI's to burn coal as their primary energy source: 1. Unloaders. 2. Conveyors. 3. Railroad track system.

C. DOE proposes to find that on June 22, 1974, Martin Marietta 1 and 2 had or thereafter acquired all other significant plant equipment and facilities associated with the burning of coal.

D. Within the meaning of ESECA and regulations promulgated pursuant thereto, the absence of any one or a combination of the equipment or facilities listed in paragraph B, above, is not grounds for concluding that Martin Marietta 1 and 2 lacked the capability and necessary plant equipment to burn coal on June 22, 1974, or were not designed with, or did not thereafter acquire, such capability.

II. The burning of coal in lieu of natural gas or petroleum products is practicable and consistent with the purposes of ESECA. DOE proposes to find that the burning of coal in lieu of petroleum products or natural gas at Martin Marietta 1 and 2 is practicable and consistent with the purposes of ESECA. This proposed finding is based upon an analysis by DOE of the fuel consumption of these kilns for the period 1973-1975, the remaining useful service life of the kilns after conversion, the net operating cost differential that would result from compliance with prohibition orders, as well as the facts and interpretations referenced below:

A. **The burning of coal is practicable.**—1. **Anticipated fuel supplies, curtailment of natural gas supply.** Based on information obtained from the Federal Energy Regulatory Commission, the natural gas supplier, and in certain cases the owner, DOE believes that the MFBI's will experience a substantial curtailment of their present supply of natural gas. This curtailment will result in their increased reliance on alternate fuels.

2. **Costs associated with burning coal.**—a. **Capital investment costs.** The total estimated initial capital investment costs, including financing costs, that would result from the acquisition and refurbishment of equipment and facilities associated with the burning of coal at Martin Marietta 1 and 2 have been determined.

This determination was based on existing DOE information and analysis as well as information filed with DOE by the owner. Approximate costs to comply with applicable environmental protection requirements have also been considered, including the cost of compliance with the air pollution control requirements of the Clean Air Act.

b. **Annual operating and maintenance costs.** The expected increase in operating and maintenance costs, exclusive of fuel costs, that would result from the burning of coal has been calculated based on information supplied by the owner or otherwise acquired by DOE.

c. **Fuel costs.** Based on an analysis of annual fuel consumption and fuel cost information supplied by the owner and/or, in appropriate circumstances, upon DOE's fuel cost estimates, DOE has determined that the burning of coal in lieu of natural gas at Martin Marietta 1 and 2 will result in an increase in annual fuel costs.

d. **Net operating cost differential.** Based on the factors stated in paragraphs A.2.a.-c., above, as well as the expected remaining useful life of the kilns after conversion, DOE has determined that the net annual operating cost differential ("NOC") (which represents the difference between operating the kilns with coal and alternate fuel(s) as their primary energy source), resulting from the conversion of Martin Marietta 1 and 2 will represent an annual cost increase of \$433,338.

3. **Reasonableness of costs of conversion.** The following analysis of the costs of conversion provides the basis for deciding that compliance with the proposed orders is not unreasonable.

In calculating the NOCD, DOE considered the present annual fuel usage. The net annual operating cost increase for these MFBI's resulting from operating on coal as the primary energy source, instead of natural gas, will be approximately \$433,338.

Although conversion to the burning of coal would be expected to increase the costs incurred by Martin Marietta 1 and 2 by \$433,338 per year, DOE proposes to find that such increased cost, per MCF of natural gas saved is not unreasonable, given the purposes of ESECA. This determination is based on consideration of the substantial potential natural gas savings that would result from conversion to coal. The determination that the costs of burning coal instead of natural gas would not be unreasonable is further supported by consideration of such costs in relation to the expected remaining useful life of the MFBI's, the size and resources of the owner as examined in the following discussion of financial capability, and the nature of the expected operations of the MFBI's.

The additional costs that would be incurred if DOE were to prohibit the burning of natural gas or petroleum products as the primary energy source at Martin Marietta 1 and 2 would only be incurred for a limited

period of time in view of the anticipated availability of national reserves of and productive capacity for natural gas. These factors point up the likelihood that Martin Marietta 1 and 2 will experience a significant curtailment of its present natural gas supply in the future, so that DOE has concluded that the cost of burning coal in lieu of natural gas is not unreasonable. (*Final Report Oil and Gas Resources, Reserves, and Productive Capacities Volumes I and II*, Federal Energy Administration, October 1975.)

4. **Financial capability of the owner.**—a. **Recovery of capital investment.** DOE proposes to find that compliance with Prohibition Orders by Martin Marietta 1 and 2 would be economically feasible. DOE's analysis took into consideration the financial capability of the owner and is based upon the owner's financial position as reported in Moody's Industrial Manual. Where necessary, DOE performed an independent analysis of the owner's financial capability, considering such factors as the owner's current financial statement and the additional capital investment required for the owner to comply with this NOI and all other NOI's which are currently under consideration, as well as additional capital investment costs related to all other outstanding Notice of Intention, to date, if any, to issue Prohibition or Construction Orders, and from all Prohibition or Construction Orders, if any, issued to date under authority of Section 2 (a) and (c) of ESEDA to MFBI's owned by Martin Marietta. DOE related these additional capital investment costs to the total capitalization of Martin Marietta and the remaining useful life after conversion of Martin Marietta 1 and 2.

DOE does not consider the effect of the added capital investment costs to represent an unreasonable burden given the financial capabilities of Martin Marietta to assume such costs.

b. **Total annual costs associated with conversion.** The total estimated annual increase in costs (amortized increased capital investment costs and other costs, exclusive of fuel costs) associated with the burning of coal as opposed to natural gas attributable to compliance with this NOI and all other NOI's which are currently under consideration has been determined. DOE has also taken into consideration total annual costs resulting from compliance with all other outstanding Notices of Intention, to date, if any, to issue Prohibition or Construction Orders, and from all Prohibition or Construction Orders, if any, issued to date under authority of Section 2 (a) and (c) of ESECA to Martin Marietta MFBI's.

Martin Marietta's total annual costs after conversion will increase by \$433,338.

B. **Consistency with the purposes of ESECA.** Because the issuance of Prohibition Orders to Martin Marietta 1 and 2 will discourage the use of natural gas or petroleum products and encourage the increased use of coal, DOE proposes to conclude that this action would be consistent with the purposes of ESECA to provide a means to assist in meeting the essential needs of the United States for fuels.

On the basis of the environmental analysis which DOE is required to conduct prior to issuance of a Notice of Effectiveness of a

Prohibition Order, as well as the necessity for these MFBI's to comply with the Clean Air Act and other applicable environmental protection requirements, DOE proposes to conclude that Prohibition Orders to Martin Marietta 1 and 2 would be consistent with the purposes of ESECA to provide for a means to assist in meeting the essential needs of the United States for fuels in a manner which is consistent, to the fullest extent practicable, with existing national commitments to protect and improve the environment.

III. COAL AND COAL TRANSPORTATION FACILITIES

WILL BE AVAILABLE TO THESE MFBI'S DURING THE PERIOD UNTIL DECEMBER 31, 1984.

A. Coal availability—1. National coal reserves. United States coal reserves are more than sufficient to supply national needs for the foreseeable future. U.S. Department of the Interior, Bureau of Mines (BOM) data show a demonstrated coal reserve base of over 400 billion tons, over half of which is currently technically and economically recoverable (*Demonstrated Coal Reserve Base of the United States, by Sulfur Category, on January 1, 1974*, Bureau of Mines (May 1975) [hereafter "BOM Survey"]). Within these recoverable reserves approximately 100 billion tons contain 1 percent or less sulfur by weight. To determine when certain quantities of these reserves are expected to be available, DOE has examined several studies referenced herein, which together provide the best current evidence as to coal availability for the period ending December 31, 1984.

2. National coal production and demand. The comparison, stated below, of estimated national coal production, national coal demand, and the total tonnage of uncommitted planned national coal production (derived from responses to a survey of coal producing companies) shows that there should be sufficient production of coal to meet the total national demand through 1980. Beyond 1980 DOE does not have data fully developed for new production plans because few coal producers have firm expansion plans that extend that far into the future. The statistics supporting more recent mine developments and enumerating updated data are currently in the process of revision.

a. National coal production. It is conservatively estimated that it will be possible to produce coal nationally in at least the following quantities:

Year:	Production potential (million tons)
1978	791.6
1979	851.4
1980	911.7
1981	960.0
1982	994.3
1983	1,017.4
1984	1,028.7
1985	1,029.6

The figures shown above are derived from FEA's *Coal Mine Expansion Study* (May 1976). This study demonstrates that most coal producers did not have firm or accurate plans for new capacity additions beyond 1980. The 1985 projection, therefore, tends to underestimate actual production potential. Another FEA study, "Availability of Potential Coal Supply Through 1985 by Quality Characteristics," August 1976 (hereafter "Coal Market Survey") and a DOE Study, "Coal Availability by Characteristics

for Fuel Conversion Orders," April 17, 1978, indicate current plans for nationwide production of uncommitted coal as follows:

Year:	Production (million tons)
1978	124.3
1979	243.1
1980	293.3
1981	350.0
1982	369.9
1983	396.2
1984	475.5
1985	544.9

b. National coal demand exclusive of ESECA prohibition order demand. The estimated national demand, excluding any increased demand resulting from DOE action under the authority of Section 2(a) of ESECA, is as follows (FEA 1976 *National Energy Outlook*):

Year:	Demand (million tons)
1978	730
1979	764
1980	799
1981	842
1982	887
1983	935
1984	985
1985	1,040

c. National ESECA prohibition order demand. The estimated potential demand for coal resulting from this NOI, from all other currently projected industrial candidates for NOI's, from all other outstanding Notices of Intention to issue Prohibition Orders to date, and from all Prohibition Orders issued to date under authority of Section 2(a) of ESECA is approximately the following (*Coal and Transportation Availability for Major Fuel Burning Installations Coal Conversion Orders: Methods and Approach*, May 20, 1977, as amended April 10, 1978) (hereafter "Methods Report"):

Year:	Demand (million tons)
1978	10,050
1979	14,492
1980	21,064
1981	23,607
1982	30,043
1983	30,043
1984	30,043

3. Characteristic coal production and demand. FEA's "Coal Market Survey" identifies coal of specific quality characteristics available for use at these MFBI's. The survey is based on data from 31 mining companies that supplied useful information on 96 mining units. Responses from these companies identified planned production of coal which was not committed to a specific buyer. For those companies which did not respond to the survey, FEA estimated their uncommitted planned production based on their 1974 production.

a. Characteristic coal requirements for these MFBI's. DOE has determined that kilns of the type used at Martin Marietta 1 and 2 will be able to burn coal of the following characteristics and comply with all applicable air pollution control requirements.

Btu's per pound (minimum)	12,500
Ash (percent, maximum)	8
Volatile (minimum percent)	30
Ash softening temperature (°F) (minimum)	2,200
Sulfur (percent, maximum) (approximate)	2.5

b. Characteristic coal demand from these MFBI's. The potential demand for coal, of

the type described above, which would be used by these MFBI's is estimated to be as follows:

Year:	Demand (thousand tons per year)
1978	84.27

c. National planned production, characteristic coal. DOE's "Methods Report" has determined that coal of the type described in paragraph A.3.a., above, is uncommitted to a specific buyer and will be potentially available to these MFBI's in a nationwide market as follows:

Year:	Production (thousand tons)
1978	124,300
1979	243,100
1980	293,300
1981	350,000
1982	369,900
1983	396,200
1984	475,500

d. National ESECA prohibition order demand for coal, regardless of characteristics. The national planned production of characteristic coal, as stated in paragraph A.3.c., above, exceeds potential demand for coal regardless of characteristic expected from this NOI, from all other currently projected industrial candidates for NOI's, from all other outstanding Notices of Intention to issue Prohibition Orders to date, and from all Prohibition Orders issued to date under authority of Section 2(a) of ESECA. National ESECA Prohibition Order demand as previously stated in paragraph A.2.c., above, is not more than the following ("Methods Report"):

Year:	Demand (thousand tons)
1978	10,050
1979	14,492
1980	21,064
1981	23,607
1982	30,043
1983	30,043
1984	30,043

e. Regional planned production, characteristic coal. Coal with the characteristics described in paragraph A.3.a., above, is uncommitted and will be potentially available to these MFBI's (in a probable regional supply/demand relationship related to the location of these MFBI's) from BOM Districts 7, 8, and 13 as follows ("Methods Report"):

Year:	Production (thousand tons)
1978	28,934
1979	52,077
1980	58,396
1981	67,882
1982	71,985
1983	77,668
1984	89,345

f. Regional ESECA prohibition order demand for coal, regardless of characteristics. The expected regional production of characteristic coal, as stated in paragraph A.3.e., above, exceeds the potential demand for coal regardless of characteristic from BOM Districts 7, 8, and 13 expected to result from this NOI, from all other currently projected industrial candidates for NOI's, from all other outstanding Notices of Intention to issue Prohibition Orders to

date, and from all Prohibition Orders issued to date under authority of Section 2(a) of ESECA. This potential regional demand is estimated in DOE's "Methods Report" to be no more than the following:

Year:	Demand (thousand tons)
1978.....	2,767
1979.....	5,374
1980.....	9,733
1981.....	10,994
1982.....	14,979
1983.....	14,979
1984.....	14,979

g. *Regional ESECA prohibition order demand for coal by sulfur characteristic.* The potential regional demand for coal from BOM Districts 7, 8, and 13 with a >2.21 percent sulfur content (which includes the 2.5 percent maximum sulfur content described in paragraph A.3.a., above) resulting from this NOI, from all other currently projected industrial candidates for NOI's from all other outstanding Notices of Intention to issue Prohibition Orders to date, and from all Prohibition Orders issued to date under authority of Section 2(a) of ESECA is estimated in DOE's "Methods Report" to be no more than the following:

Year:	Demand (thousand tons) percent sulfur, > 2.21
1978.....	0
1979.....	199
1980.....	345
1981.....	421
1982.....	421
1983.....	421
1984.....	421

The regional planned production of coal stated in paragraph A.3.e., above, with the characteristics described in paragraph A.3.a., above, far exceed this potential ESECA regional demand for coal by sulfur characteristic.

4. *State or local laws.* DOE has found no state or local laws or policies limiting the extraction or utilization of coal that would adversely affect these production figures, and none have been brought to DOE's attention.

5. *Conclusion.* DOE's "Methods Report" has identified nationally and in BOM Districts 7, 8, and 13 uncommitted coal production that meets the requirements of Martin Marietta 1 and 2 as described in paragraph A.3.a., above. DOE, therefore, proposes to find that this uncommitted coal exists in amounts sufficient in any year to meet the estimated additional demand for coal, both nationally and from these Districts, resulting from this NOI, from all other currently projected industrial candidates for NOI's, from all other outstanding Notices of Intention to issue Prohibition Orders to date, and from all Prohibition Orders issued to date under authority of Section 2(a) of ESECA. Coal for these MFBI's will probably be bought from producers according to regional supply/demand relationships related to the MFBI's location from BOM Districts 7, 8, and 13. DOE observes, however, that these MFBI's could purchase coal in other markets as such production becomes available. (*The Feasibility of Considering Expanded Use of Western Coal by Midwestern and Eastern Utilities in the Period 1978 and Beyond*, School of Engineering, University of Pennsylvania November 7, 1975.)

B. *Coal transportation.*—1. *Location of MFBI's and coal supply.* Based on a DOE

study, *Coal Transportation Availability Report*, January 1978, (hereafter *Transportation Availability Report*) coal for Martin Marietta 1 and 2 would probably come from Bureau of Mines (BOM) District 8 both as a primary source of supply and as the alternate supply area. Other sources of complying coal are available within the United States. However, the following analysis of transportation availability is based on the most likely, or primary, route from the BOM supply area stated above, as well as on two alternate routes.

2. *Route of coal shipment.* The primary route for coal delivery to Martin Marietta 1 and 2 is to originate in the Corbin, Kentucky area, BOM District 8, on the Louisville and Nashville Railroad (L&N) which would move it via Knoxville, Tenn. to Atlanta, Ga. Total rail mileage is approximately 300 miles.

The alternate route for coal delivery from the primary supply area would originate coal in the Madisonville, Kentucky area on the L&N which would carry it via Nashville, Tenn. to Chattanooga, Tenn. Central of Georgia Railroad Co. (CGA, a part of Southern Railway Co., SOU) would pick it up there and move it via Rome, Ga. to Atlanta, Ga. Total distance is 406 miles by rail.

The alternate route for coal delivery from the alternate supply area would originate coal in the Devon, W. Va. area in BOM District 8 on the Norfolk and Western Railroad (N&W) line. N&W would move the coal east to Martinsville, Va. and south to Winston-Salem, N.C. where Southern Railway would pick it up and move it via Charlotte, N.C. to Greenville, S.C. and west to Atlanta, Ga. Total mileage is approximately 648 miles by rail.

3. *Originating trunk carrier.* The L&N, originator of coal on the primary route and one alternate route for Martin Marietta 1 and 2, has about 34,000 hopper cars with an estimated average capacity of 75 tons. Using an average number of 20 deliveries per year per 75-ton car, the L&N would need 56 additional cars by 1979 to handle the increased demand of Martin Marietta 1 and 2. Between January 1975 and January 1976, L&N has increased total coal carrying capacity by about 10 percent and intends to expand its capacity to the level needed to handle new business. The shipment would probably be done by general train.

The N&W, originator of coal on the alternate route from the alternate supply area, has approximately 54,000 hopper cars with an estimated average capacity of 83 tons. Using an average number of 20 deliveries per year per 83-ton car, the N&W would need 51 additional cars by 1979 to handle the increased demand from Martin Marietta 1 and 2. The N&W indicated that the retirements from their hopper fleet are not expected to exceed 1,200 per year and that they have shop capacity to build between 1,500 and 5,000 new cars per year, depending on the demand for coal from their supply areas. Shipments would probably be by general train.

DOE has not found nor has been informed of any apparent constraints to carrying coal for any originating, alternate, or intermediate carriers should they be used.

4. *Destination carrier and plant facilities.* The company has indicated coal has been delivered to Martin Marietta 1 and 2 in the past L&N and the Southern Railway and it is expected that this mode of transportation would be used in the future. The owner reported that storage capacity for coal was ac-

quired in 1975. The anticipated effective date of the proposed Prohibition Orders allow sufficient time to add coal handling and receiving equipment and a railroad track system.

5. *Conclusion.* Based on the foregoing analysis, DOE proposes to find that coal transportation facilities will be available for the period a Prohibition Order is expected to be in effect since no major constraints to coal delivery over the primary route to Martin Marietta 1 and 2 presently exist, and alternate routes are available.

[FR Doc. 78-12073 Filed 5-2-78; 8:45 am]

[1505-01]

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER 78-279]

NIAGARA MOHAWK POWER CORP.

Notice of Filing

Correction

In FR Doc. 78-9670 appearing at page 15357 in the issue for Wednesday, April 12, 1978, the docket number in the heading should be changed from "(Docket No. ER78-278)" to "(Docket No. ER78-279)".

[6560-01]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 890-4; PF-99]

PESTICIDE AND FOOD/FEED ADDITIVE PETITIONS

Filing

Pursuant to the provisions of sections 408(d)(1) and 409(b)(5) of the Federal Food, Drug, and Cosmetic Act, the Environmental Protection Agency (EPA) gives notice that the following petitions have been submitted to the Agency for consideration

PP 8F2070. Monsanto Agricultural Products Co., 800 North Lindbergh Boulevard, St. Louis, Mo. 63166. Proposes that 40 CFR 180.364 be amended by the establishment of a tolerance for the combined residues of the herbicide glyphosate [N-(phosphonomethyl)glycine] and its metabolite aminomethylphosphonic acid in or on the raw agricultural commodity asparagus at 0.2 part per million (ppm). Proposed analytical method for determining residues is by gas liquid chromatography using a phosphorous specific flame photometric detector. PM 25. (202-426-2632)

FAP 8H5182. Mobay Chemical Corp., Chemagro Agricultural Division, P.O. Box 4913, Hawthorn Road, Kansas City, Mo. 64120. Proposes that 21 CFR 193 be amended by the establishment of a regulation permitting the use of the insecticide O-ethyl O-[4-(methylthio)phenyl] S-propyl phosphorodithioate and its cholinesterase-inhibiting metabolites on the commodity cottonseed oil with a tolerance limitation of 1.0 ppm resulting in food. PM12. (202-426-9425)

FAP 8H5182. Mobay Chemical Corp. Proposes that 21 CFR 561 be amended by the

establishment of a regulation permitting the use of the insecticide O-ethyl O-[4-(methylthio)phenyl] S-propyl phosphorodithioate and its cholinesterase-inhibiting metabolites on the commodity cottonseed hulls with a tolerance limitation of 1.0 ppm resulting in feed. PM12.

Interested persons are invited to submit written comments on these petitions to the Federal Register Section, Technical Services Division (WH-569), Office of Pesticide Programs, EPA, Room 401, East Tower, 401 M Street SW., Washington D.C. 20460. Inquiries concerning these petitions may be directed to the designated Product Manager (PM), Registration Division (WH-567), Office of Pesticide Programs, at the above address, or by telephone at the numbers cited. Written comments should bear a notation indicating the petition number to which the comments pertain. Comments may be made at any time while a petition is pending before the Agency. All written comments filed pursuant to this notice will be available for public inspection in the office of the Federal Register Section from 8:30 a.m. to 4 p.m. Monday through Friday.

Dated: April 25, 1978.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

[FR Doc. 78-11977 Filed 5-2-78; 8:45 am]

[6730-01]

FEDERAL MARITIME COMMISSION

AGREEMENTS FILED

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreements at the Washington office of the Federal Maritime Commission, 1100 L Street NW., Room 10126; or may inspect the agreements at the Field Offices located at New York, N.Y., New Orleans, La., San Francisco, Calif., and Old San Juan, P.R. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, on or before May 15, 1978. Any person desiring a hearing on the proposed agreements shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity

the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreements (as indicated herein-after) and the statement should indicate that this has been done.

Agreement No.: T-3640.

Filing party: Frederick M. Lowther, Counsel, Dickstein, Shapiro & Morin, 2101 L Street NW., Washington, D.C. 20037.

Summary: Agreement No. T-3640, between Mitsui & Co. (U.S.A.), Inc., (Mitsui), and Cook Industries, Inc., Bayside Warehouse Co. and St. John Shipping Co., Inc., (Sellers), is an Asset Purchase Agreement whereby, subject to the terms and conditions set forth in the agreement, Mitsui agrees to purchase the grain storage and handling facility and related assets from Sellers located in Reserve, La.

Dated: April 27, 1978.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-12045 Filed 5-2-78; 8:45 am]

[6730-01]

[Independent Ocean Freight Forwarder License No. 466]

B. H. SOBELMAN & CO., INC.

Reinstatement of License

By Federal Maritime Commission Order served and published in the FEDERAL REGISTER, B. H. Sobelman & Co., Inc.'s Independent Ocean Freight Forwarder License No. 466 was revoked, effective January 11, 1978, for failure to maintain a valid surety bond on file with the Commission. The Order of Revocation was served on January 23, 1978.

An appropriate surety bond has been received in favor of B. H. Sobelman & Co., Inc. and compliance pursuant to Section 44, Shipping Act, 1916, and Section 510.9 of the Commission's General Order 4 has been achieved.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 201.1 (Revised) Section 5.01(a), dated August 8, 1977, Independent Ocean Freight Forwarder License No. 466R shall be reissued to B. H. Sobelman & Co., Inc. effective January 16, 1978. A copy of this Notice of Reinstatement shall be published in the FEDERAL REGISTER and served upon B. H. Sobelman & Co., Inc.

ROBERT M. SKALL,
Deputy Director, Bureau of
Certification and Licensing.

[FR Doc. 78-12043 Filed 5-2-78; 8:45]

[6730-01]

[Independent Ocean Freight Forwarder License No. 1325]

C. & J. FORWARDING INC.

Order of Revocation

On April 20, 1978, C. & J. Forwarding Inc., 8697 21st Avenue, Brooklyn, N.Y. 11214, voluntarily surrendered its Independent Ocean Freight Forwarder License No. 1325 for revocation.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 201.1 (Revised) Section 5.01(c), dated August 8, 1977:

It is ordered, That Independent Ocean Freight Forwarder License No. 1325, issued to C. & J. Forwarding Inc., be and is hereby revoked effective May 13, 1978 without prejudice to reapply for a license in the future.

It is further ordered, That a copy of this Order be published in the FEDERAL REGISTER and served upon C. & J. Forwarding Inc.

ROBERT M. SKALL,
Deputy Director, Bureau of
Certification and Licensing.

[FR Doc. 78-12041 Filed 5-2-78; 8:45 am]

[6730-01]

[Independent Freight Forwarder License No. 648]

GATEWAY SHIPPING CO., INC.

Reinstatement of License

By Federal Maritime Commission Order served and Published in the FEDERAL REGISTER, Gateway Shipping Co., Inc.'s Independent Ocean Freight Forwarder License No. 648 was revoked effective March 22, 1978, for failure to maintain a valid surety bond on file with the Commission. The Order of Revocation was served on April 5, 1978.

An appropriate surety bond has been received in favor of Gateway Shipping Co., Inc., effective March 22, 1978, and compliance pursuant to Section 44, Shipping Act, 1916, and Section 510.9 of the Commission's General Order 4 has been achieved.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission Order No. 201.1 (Revised) Section 5.01(a) dated August 8, 1977, Independent Ocean Freight Forwarder License No. 648 shall be reissued to Gateway Shipping Co., Inc., effective March 22, 1978. A copy of this notice of reinstatement shall be published in the FEDERAL REGISTER and served upon Gateways Shipping Co., Inc.

For the Commission.

ROBERT M. SKALL,
Deputy Director, Bureau of
Certification and Licensing.

[FR Doc. 78-12044 Filed 5-2-78; 8:45 am]

[6730-01]

(Docket No. 78-13)

OLD BEN COAL CO. v. SEA-LAND SERVICE, INC.**Filing of Complaint**

Notice is hereby given that a complaint filed by Old Ben Coal Co. against Sea-Land Service, Inc. was served April 25, 1978. Complainant alleges that it has been subjected to the payment of charges for services which are unjustly discriminatory or prejudicial in violation of Section 17 of the Shipping Act, 1916. The charges were assessed for reworking of overloaded containers and for demurrage which accrued while they were being reworked.

Hearing in this matter, if any is held, shall commence on or before October 25, 1978. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon a showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statement, affidavits, depositions, or other documents or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-12042 Filed 5-2-78; 8:45]

[6210-01]

FEDERAL RESERVE SYSTEM**FIRST ARKANSAS BANKSTOCK CORP.****Acquisition of Bank**

First Arkansas Bankstock Corp., Little Rock, Ark., has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to retain 91.2 percent or more of the voting shares of First National Bank in Mena, Mena, Ark. The factors that are considered in acting on the application are set forth in section 3(c) of the act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than May 27, 1978.

Board of Governors of the Federal Reserve System, April 27, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary
of the Board.

[FR Doc. 78-12004 Filed 5-2-78; 8:45 am]

[4110-85]

**DEPARTMENT OF HEALTH,
EDUCATION, AND WELFARE****Office of the Secretary****PRIVACY ACT OF 1974****Deletion of Systems of Records**

AGENCY: Department of Health, Education, and Welfare.

ACTION: Notification of termination or deletion of systems of records which were last published in the FEDERAL REGISTER, vol. 41, No. 183, September 20, 1976, on the pages indicated below.

SUMMARY: 1. The following system notice has been deleted because it duplicates a system being reported by the Coast Guard under system notice DOT/CG 572:

HSA/BMS 0032.01, PHS Beneficiary (Coast Guard) Contract Medical Care Records (page 40924).

2. The following system notices have been deleted because they were consolidated into a single notice, 09-35-0034, Health Manpower.

Inventories and Surveys (National Center for Health Statistics): HRA/BHM 0004.01, National Register of Dentists (page 40889); HRA/BHM 0036.01, National Register of Licensed Dental Hygienists (page 40899).

3. The following system notices have been deleted because the systems are no longer in use:

HRA/BHM 0008.01, Dental Patient Records (page 40891); CDC/NIOSH 0037.01, Toll Booth Operators Exposed to Auto Exhausts (page 40831); CDC/NIOSH 0072.02, Biodynamics of Lifting in the Sagittal Plane (page 40849); CDC/NIOSH 0081.01, Metabolic Costs and Physiological Response to Heat in Lab Studies (page 40853); CDC/NIOSH 0124.01, Mortality of Dairymen (page 40873); CDC/NIOSH 0128.01, Development of Biologic Standards by Breath Analysis (page 40875).

4. The following system notices have been deleted because records are no longer retrieved by personal identifier:

HRA/BHM 0010.01, Survey of Non-Licensed Dental Personnel (page 40891); HRA/BHM 0029.01, Operation MEDIHC (page 40897); NIH/NCL 0167.01, Administration: Visitor Location (page 40945); NIH/NCI 0293.02, Clinical Research: Urinary Steroid Levels in Breast Cancer Patients (page 40959); NIH/NICHD 0006.02, Contract Administration (page 40926).

5. The following system notice has been deleted because management of the system has been transferred from the Health Resources Administration to the National Institutes of Health, where it has been subsumed under system notice 09-25-132, Research Studies Dealing with Prevention of Dental Caries, Plaque, and Gingivitis:

HRA/BHM 0018.01, Plaque Study in a School Setting (page 40893).

6. The following system notice has been deleted because the records are covered by an existing notice of the Civil Service Commission, CSC/Government 3:

NIH/FIC 0124.02, Personnel Agreements (page 40938).

7. The following system notice has been deleted because it duplicates system number 09-20-0056, which has the same title:

CDC/NIOSH 0066.02, Metabolic Costs and Physiological Response to Heat in Industrial Workers (page 40845).

8. The following system notice has been deleted because the records are covered by system notice 09-20-0136, Epidemiologic Studies of Special Disease Problems:

CDC/BE 0104.01, Ravies Serum Antibody Study (page 40863).

Effective Date: September 29, 1977.

Dated: April 27, 1978.

LEONARD SCHAEFFER,
Assistant Secretary for
Management and Budget.

[FR Doc. 78-11992 Filed 4-28-78; 10:22 am]

[4310-02]

DEPARTMENT OF THE INTERIOR**Bureau of Indian Affairs**

(Dockets 350- C and D)

**THREE AFFILIATED TRIBES OF FORT BERTHOLD
RESERVATION**

Plan for the Use and Distribution of Judgment
Funds Awarded Before the Indian Claims
Commission

APRIL 21, 1978.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs by 210 DM 1.2.

The Act of October 19, 1973 (Pub. L. 93-134, 87 Stat. 466), requires that a plan be prepared and submitted to Congress for the use and distribution of funds appropriated to pay a judgment of any Indian tribe. Funds were appropriated by the Act of June 1, 1976, 90 Stat. 629, in satisfaction of the awards granted to the Three Affiliated Tribes of the Fort Berthold Reservation in Indian Claims Commission Dockets 350- C and D. The plan for the use and distribution of the funds was submitted to the Congress with a letter dated November 9, 1977, and was received (as recorded in the Congressional Record) by the House of Representatives on November 15, 1977, and by the Senate on November 29, 1977. Neither House of Congress having adopted a resolution disapprov-

ing it, the plan became effective on March 13, 1978, as provided by section 5 of the 1973 Act, *supra*.

The plan reads as follows:

The funds appropriated by the Act of June 1, 1976, 90 Stat. 629, in satisfaction of awards granted to the Three Affiliated Tribes in Dockets 350- C and D before the Indian Claims Commission, less attorney fees and litigation expenses, and including all interest and investment income accrued, shall be utilized as herein provided.

Per Capita Payment Aspect

The Three Affiliated Tribes' latest approved membership roll shall be brought current to include all eligible members born on or prior to and living on the effective date of this plan. Subsequent to the preparation and approval of the membership roll, the Secretary of the Interior (hereinafter 'Secretary') shall make a per capita distribution of eighty (80) percent of the funds, in a sum as equal as possible, to each tribal enrollee.

The per capita shares of living competent adults shall be paid directly to them. The per capita shares of legal incompetents shall be handled pursuant to 25 CFR 104.5. The per capita shares of minors shall be handled pursuant to 25 CFR 60.10 (a) and (b)(1) and 104.4, as amended November 5, 1976 (41 FR 48735, 48736). The per capita shares of deceased individual beneficiaries shall be determined and distributed in accordance with 43 CFR, part 4, subpart D.

The per capita shares of adults who are determined by the tribal governing body and the Agency Superintendent to be in arrears in debts to the tribe shall be placed in individual Indian money (IIM) accounts. Subsequent to the placement of such shares in IIM accounts, the Agency Superintendent shall have authority to collect all or part of such shares and apply the collections to the payment of the delinquent debts pursuant to 25 CFR 104.9.

Programming Aspect

Twenty (20) percent of the funds, and any amounts remaining after the per capita payment provided above, shall be invested by the Secretary and the interest and investment income accrued shall be utilized on an annual budgetary basis, subject to the approval of the Secretary, for the following purposes:

1. *Scholarship Fund.*—Three (3) percent of the annual income shall be utilized to fund graduate and post-graduate studies in the fields of medicine, law, and the physical sciences, including engineering.

2. *Farmers Home Administration Loan.*—Fourteen (14) percent of the annual income shall be applied to the principal of the tribal loan for a land purchase program under the Farmers Home Administration. Subsequent to the payment of the loan in full, this portion of the annual income shall continue to be utilized in the Tribal Land Purchase Program.

3. *Community Development.*—Thirty-five (35) percent of the annual income shall be divided on a local resident tribal member basis among the five reservation communities or segments for community development projects as approved by the tribal governing body.

4. *Tribal Administration.*—Forty-eight (48) percent of the annual income shall be utilized for tribal attorneys' fees and expenses and for the payment of insurance premiums on tribal property.

Should any funds in any of the above-cited program categories not be needed or be found in excess of programming goals in any given annual budget, such funds may be transferred by the tribal governing body, with the approval of the Secretary, to another of the above-cited program categories.

RICK LAVIS,
Deputy Assistant Secretary,
Indian Affairs.

[FR Doc. 78-11978 Filed 5-2-78; 8:45 am]

[4310-84]

Bureau of Land Management

[Colorado 26349]

MOUNTAIN FUEL SUPPLY CO.

R/W Application for Pipeline

Effective Date: April 26, 1978.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (41 Stat. 449), as amended (30 U.S.C. 185), Mountain Fuel Supply Co., 180 East First South, Salt Lake City, Utah 84139, has applied for a right-of-way for a 3½" o.d. surface lateral natural gas pipeline approximately 0.41 of a mile long for the Sugar Loaf State Land Well No. 1, across the following Public Lands:

SIXTH PRINCIPAL MERIDIAN, MOFFAT
COUNTY, COLO.

T. 11 N., R. 101 W.,

Section 4: Lot 5

T. 12 N., R. 101 W.

Section 33: SE¼SE¼

The facilities will enable the applicant to convey natural gas from Sugar Loaf State Land Well No. 1 to meet customer demand for increased natural gas supply in the applicant's service area. The purposes for this notice are: (1) To inform the public that the Bureau of Land Management is proceeding with the preparation of environmental and other analytic reports necessary for determining whether or not the application should be approved and if approved, under what terms and conditions; (2) to give all interested parties the opportunity to comment on the application; (3) to allow any party asserting a claim to the lands involved or having bona fide objections to the proposed natural gas gathering system to file its claim or objections in the Colorado State Office. Any party so filing must include evidence that a copy thereof has been served on Mountain Fuel Supply Co.

Any comment, claim, or objections must be filed with the Chief, Branch of Adjudication, Bureau of Land Management, Colorado State Office, Room 700, Colorado State Bank Building, 1600 Broadway, Denver, Colo. 80202,

as promptly as possible after publication of this notice.

ANDREW W. HEARD, Jr.,
Leader, Craig Team,
Branch of Adjudication.

[FR Doc. 78-12031 Filed 5-2-78; 8:45 am]

[1410-03]

NATIONAL COMMISSION ON NEW TECHNOLOGICAL USES OF COPY- RIGHTED WORKS

MEETING

The National Commission on New Technological Uses of Copyrighted Works (CONTU) will hold its 22d meeting in Minneapolis, Minn., on Thursday, May 18, and Friday, May 19, 1978.

The meetings will be held in the Dean's Conference Room at the University of Minnesota Law School, 229 19th Avenue South, Minneapolis and will convene at 2 p.m. on Thursday and 9:30 a.m. Friday. The Commission will be considering the reports of the Photocopy and New Works Subcommittees on Thursday and will discuss the Final Report on Friday.

Both sessions will be open to the public.

ARTHUR J. LEVINE,
Executive Director, National
Commission on New Techno-
logical Uses of Copyrighted
Works.

[FR Doc. 78-12021 Filed 5-2-78; 8:45 am]

[7555-01]

NATIONAL SCIENCE FOUNDATION

ADVISORY COMMITTEE FOR SCIENCE EDUCATION

Amendment to Notice of Meeting

The notice of meeting for the Thirty-Eighth Meeting of the Advisory Committee for Science Education, which was published in the FEDERAL REGISTER on April 14, 1978, 43 FR 15809, has been amended to read:

Agenda: Thursday, May 4: Update on FY 1979 Budget Hearings; Status of NSF/NIE Collaborative Research Program; Oversight Activities—General Discussion and Meetings of Subcommittees.

Friday, May 5: Reports of Oversight Subcommittees; General Discussion of Subcommittee Reports; Meetings of Oversight Subcommittees to Plan Further Work.

M. REBECCA WINKLER,
Committee Management
Coordinator.

APRIL 28, 1978.

[FR Doc. 78-12025 Filed 5-2-78; 8:45 am]

[7590-01]

NUCLEAR REGULATORY COMMISSION

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS SUBCOMMITTEE ON THE DAVIS BESSE NUCLEAR POWER STATION, UNITS 2 AND 3

Meeting

The ACRS Subcommittee on the Davis Besse Nuclear Power Station will hold a meeting on May 18, 1978, in Room 1046, 1717 H Street NW., Washington, D.C. 20555 to review the application of the Toledo Edison Co. for a permit to construct Units 2 and 3 of this Station.

In accordance with the procedures outlined in the FEDERAL REGISTER on October 31, 1977, page 56972, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows:

THURSDAY, MAY 18, 1978

8:30 a.m. until the conclusion of business

The Subcommittee may meet in Executive Session, with any of its consultants who may be present, to explore and exchange their preliminary opinions regarding matters which should be considered during the meeting and to formulate a report and recommendations to the full Committee.

At the conclusion of the Executive Session, the Subcommittee will hear presentations by and hold discussions with representatives of the NRC Staff, the Toledo Edison Co., and their consultants, pertinent to this review.

The Subcommittee may then caucus to determine whether the matters identified in the initial session have been adequately covered and whether the project is ready for review by the full Committee.

In addition, it may be necessary for the Subcommittee to hold one or more closed sessions for the purpose of exploring matters involving proprietary information. I have determined, in accordance with subsection 10(d) of Pub. L. 92-463, that, should such sessions be required, it is necessary to close these sessions to protect proprietary information (5 U.S.C. 552b(c)(4)).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted

therefor can be obtained by a prepaid telephone call to the Designated Federal Employee for this meeting, Mr. Ragnwald Muller, telephone 202-634-1413, between 8:15 a.m. and 5 p.m., e.s.t.

Background information concerning items to be considered at this meeting can be found in documents on file and available for public inspection at the NRC Public Document Room, 1717 H Street NW., Washington, D.C. 20555 and at the Ida Rupp Public Library, 310 Madison Street, Port Clinton, Ohio 43452.

Dated: April 27, 1978.

JOHN C. HOYLE,
Advisory Committee,
Management Officer.

[FR Doc. 78-11884 Filed 5-2-78; 8:45 am]

[7590-01]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS

Revised Notice of Meeting

The meeting notice for the meeting previously scheduled on May 4-6, 1978 (published on April 19, 1978—FEDERAL REGISTER, Volume 43, p. 16575) is revised as detailed below. This revision incorporates schedule changes due to the cancellation of the sessions for the Maine Yankee Atomic Power Station and Indian Point Nuclear Generating Station, Unit 3. The changes include cancellation of the session on Saturday, May 6, 1978.

The agenda for the subject meeting will be as follows:

THURSDAY, MAY 4, 1978

8:30 a.m.—9 a.m.: Executive Session (Open)—The Committee will hear and discuss the report of the ACRS Chairman regarding miscellaneous matters relating to ACRS activities.

9 a.m.—10:30 a.m.: Report on DOE Task Force Report on Review of Nuclear Waste Management (DOE/ER-0004/D) (Open)—The Committee will hear and discuss a report by representatives of the Department of Energy regarding plans for interim storage and long-term disposal of radioactive wastes.

10:45 a.m.—12 Noon: Executive Session (Open)—The Committee will hear and discuss reports of Subcommittees, Working Groups, and members on a number of generic matters related to reactor safety including procedures for review of proposed operations at increased power levels, ACRS comments regarding the establishment of a quasi-judicial board to investigate reactor accidents, and calculation of off-site consequences from large atmospheric releases of radioactivity. Qualifications of candidates proposed for appointment to the Committee will also be discussed. The Committee will discuss a proposed report to the Nuclear Regulatory Commission regarding the Liquid Pathway Generic Study.

This session will be open to the public except for those portions which must be closed to protect information the release of which would represent an unwarranted invasion of personal privacy.

1 p.m.—2:30 p.m.: Executive Session (Open)—The Committee will discuss matters for the meeting with the NRC Commissioners including the following matters:

Review of proposed nuclear plant operations at "stretch" power.

ACRS consideration of the establishment of a statutory quasi-judicial board for investigation of reactor accidents.

ACRS Fellowship Program.

Evaluation of the effects of low-level radiation on nuclear plant workers and the general public in the vicinity of reactors.

Proposed use of nuclear plantsite comparisons based on calculations of the consequences of large releases of radioactive materials.

Candidates for appointment to the ACRS.

Portions of this session will be closed as required to protect information the release of which would represent an unwarranted invasion of personal privacy.

2:30 p.m.—3:30 p.m.: Meeting with NRC Commissioners (Open)—The Committee will meet with the NRC Commissioners to discuss the items noted above. Portions of this session will be closed as required to protect information the release of which would represent an unwarranted invasion of personal privacy.

3:30 p.m.—5 p.m.: Executive Session (Open)—The Committee will hear and discuss reports of ACRS Subcommittee activity regarding Anticipated Transients Without Scram, reevaluation of NRC siting policies and practices, and Regulatory Activities.

The Committee will also discuss a proposed ACRS report to the Nuclear Regulatory Commission regarding the Liquid Pathway Generic Study.

FRIDAY, MAY 5, 1978

8:30 a.m.—12:30 p.m.: Meeting with NRC Staff (Open)—The Committee will hear presentations from and hold discussions with members of the Nuclear Regulatory Commission Staff regarding recent licensing actions and operating experience including environmental evaluation of the Floating Nuclear Plant, review of proposed safe shutdown system for the Oconee Nuclear Plant, and review of LNG storage facilities at a site near the Calvert Cliffs Nuclear Plant. The NRC Staff will also report to the ACRS on generic matters related to nuclear powerplant safety including criteria for combination of seismic and other dynamic loads, proposed reliability data collection system for nuclear powerplants, proposed revision of 10 CFR Part 100, Appendix A; Seismic Considerations, and regulatory/safety practices and policies in the Union of Soviet Socialist Republics. The future schedule for ACRS activities and topics proposed for consideration by the Committee will also be discussed.

1:30 p.m.—4 p.m.: Executive Session (Open)—The Committee will complete preparation of its reports to the NRC regarding the Liquid Pathway Generic Study.

The Committee will discuss reports of its members regarding miscellaneous ACRS ac-

tivities such as proposed reorganization of ACRS Subcommittees and Working Groups and proposed meetings of the ACRS with members of the FRG Reactor Safety Committee and the Groupe Permanent of the Republic of France.

The Committee will complete its consideration of items discussed during this meeting.

Procedures for the conduct of and participation in ACRS meetings were outlined in the *FEDERAL REGISTER* on October 31, 1977, page 56972. In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

I have determined in accordance with Subsection 10(d) of Pub. L. 92-463 that it is necessary to close portions of the meeting to protect information the release of which would represent an unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). Separation of factual information from information considered exempt from disclosure during closed portions of the meeting is not considered practical.

Background information concerning items to be considered during this meeting can be found in documents on file and available for public inspection in the Nuclear Regulatory Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20555.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, 202-634-1371, between 8:15 a.m. and 5 p.m. e.s.t.

Dated: May 1, 1978.

JOHN C. HOYLE,
Advisory Committee
Management Officer.

[FR Doc. 78-12172 Filed 5-2-78; 8:45 am]

[7590-01]

[Dockets Nos. 50-269, 50-270, and 50-287]

DUKE POWER CO., OCONEE NUCLEAR STATION, UNITS NOS. 1, 2, and 3

Order for Modification of License

I. The Duke Power Co. (the licensee), is the holder of Facility Operating

Licenses Nos. DPR-38, 47, and 55, which authorize the operation of the nuclear power reactors known as Oconee Nuclear Station, Units Nos. 1, 2, and 3 (the facility), at steady reactor power levels not in excess of 2,568 megawatts thermal (rated power) for each unit. The facility consists of Babcock & Wilcox Co. designed pressurized water reactors (PWR) located at the licensee's site in Oconee County, S.C.

II. In accordance with the requirements of the Commission's ECCS Acceptance Criteria, 10 CFR 50.46, the licensee submitted on July 9, 1975, an ECCS evaluation for the facility. The ECCS performance submitted by the licensee was based upon an ECCS Evaluation Model developed by the Babcock & Wilcox Co. (B&W), the designer of the Nuclear Steam Supply System for this facility. The B&W ECCS Evaluation Model had been previously found to conform to the requirements of the Commission's ECCS Acceptance Criteria, 10 CFR part 50.46 and appendix K. The evaluation indicated that with the limits set forth in the facility's technical specifications, the ECCS cooling performance for the facility would conform with the criteria contained in 10 CFR 50.46(b) which govern calculated peak clad temperature, maximum cladding oxidation, maximum hydrogen generation, coolable geometry and long-term cooling.

On April 12, 1978, B&W informed the NRC that it had determined that in the event of a small break LOCA on the discharge side of a reactor coolant pump, high pressure injection (HPI) flow to the core could be reduced somewhat. Subsequent calculations indicated that in such a case the calculated peak clad temperature might exceed 2200F.

Previous small break analyses for B&W 177 fuel assembly (FA) lowered loop plants had identified the limiting small break to be in the suction line of the reactor coolant pump. Recent analyses have shown that the discharge line break is more limiting than the suction line break.

Each Oconee Nuclear Station unit has an ECCS configuration which consists of two high pressure injection (HPI) trains which are supplied by three HPI pumps. Each train injects into two of the four reactor coolant system (RCS) cold legs on the discharge side of the RCS pump.

The two parallel HPI trains are connected but are kept isolated by manual valves (known as the cross-over valves) that are normally closed.

Duke Power has proposed to maintain all three pumps in an operable status. The Oconee emergency power system is designed with sufficient capacity for this mode of operation. Upon receiving a safety injection

signal the HPI pumps are started and valves in the injection lines are opened. Assuming loss of offsite power and the worst single failure (the HPI pump C or the HPI valve HP26), two HPI pumps would still be available and only one of the two injection valves would fail to open.

If a small break is postulated to occur in the RCS piping between the RCS pump discharge and the reactor vessel, the high pressure injection flow injected into this line (about 50 percent of the output of two high pressure pumps) could flow out the break. Therefore, for the worst combination of break location and single failure, 50 percent of the flow rate of two high pressure ECCS pumps would contribute to maintaining the coolant inventory in the reactor vessel. This situation had not been previously analyzed and B&W had indicated that the limits specified in 10 CFR 50.46 may be exceeded.

B&W has stated that they have analyzed a spectrum of small breaks in the pump discharge line and have determined that to meet the limits of 10 CFR 50.46 operator action is required to open the two manual operated cross-over valves and to manually align the motor driven isolation valve which had failed to open. This would allow the flow from the two HPI pumps to feed all four reactor coolant legs. B&W has assumed that 30 percent of the flow would be lost through the break and 70 percent would refill the core. The licensee has committed to provide for the necessary operator actions within the required time frame. That is, in the event of a small break and a limiting single failure, manual action will be taken to begin opening these valves within 5 minutes and have them fully opened and an adequate flow split obtained within the following 10 minutes. The analyses performed by B&W assumed that the flow split was established at 650 seconds by operator action. We conclude that the analyses are a reasonable approximation of the operator action that actually will be taken, provided specific procedures are prepared and followed to assure such action.

B&W has stated that a .15 ft.² discharge line break, with the aforementioned operator actions, is the most limiting case. To arrive at this conclusion, B&W has performed analyses at break sizes of .3, .2, .15, .1, and .04 ft.², using an approved appendix K model for blowdown. Additional analyses for the Oconee plants at 2,568 Mwt indicate no core uncover for the 0.15 ft.² limiting break. For this break size B&W has conservatively estimated the peak clad temperature to be well below the limits of 10 CFR 50.46(b).

B&W has indicated the manner in which the calculational methods have been revised and has indicated that

their revised calculations are wholly in conformance with the requirements of 10 CFR 50.46. However, B&W has not yet had the opportunity to fully present the result of its calculations to the licensee for submittal to the NRC staff, and the staff has accordingly not had the opportunity to fully assess the new calculations.

Therefore, until the staff has had the opportunity to fully assess the B&W revised calculations operation in accordance with the operating procedures specified in this order, will assure that the ECCS will conform to the performance requirements of 10 CFR 50.46(b). Accordingly, such procedures provide reasonable assurance that the public health and safety will not be endangered. Upon notification by the NRC staff, the licensee committed to provide the staff with B&W's reevaluation of ECCS performance applicable to the licensee's facility as promptly as possible, and to submit a technical specification requiring appropriate operating procedures to assure required operator action as discussed herein. Such procedures were described and the commitments confirmed by the licensee's letter of April 21, 1978. The staff believes that the licensee's action, under the circumstances, is appropriate and that this action should be confirmed by NRC order. Upon satisfactory completion of our assessment of the revised evaluation, we will accordingly modify the authorization to operate the facility.

Copies of the following document are available for inspection at the Commission's Public Document Room at 1717 H Street, Washington, D.C. 20555, and are being placed in the Commission's local public document room at the Oconee County Library, 201 South Spring, Walhalla, S.C. 29691.

(1) Letter from Mr. William O. Parker, Jr. to Mr. Edson G. Case, Acting Director, Office of Nuclear Reactor Regulation, dated April 21, 1978.

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations in 10 CFR parts 2 and 50, *It is ordered* That Facility Operating Licenses Nos. DPR-38, 47, and 55, are hereby amended by adding the following new provisions:

(1) As soon as possible, the licensee shall submit a reevaluation wholly in conformance with 10 CFR 50.46 of ECCS cooling performance calculated in accordance with the B&W Evaluation Model for operation with operating procedures described in its letter of April 21, 1978, and

(2) Until further authorization by the Commission, the licensee shall operate in accordance with the procedures described in its letter of April 21, 1978.

Dated at Bethesda, Md., this 26th day of April 1978.

For the Nuclear Regulatory Commission.

VICTOR STELLO, Jr.,
Director, Division of Operating
Reactors, Office of Nuclear Re-
actor Regulation.

[FR Doc. 78-11991 Filed 5-2-78; 8:45 am]

[7590-01]

[NUREG-0450]

MATERIAL CONTROL AND MATERIAL ACCOUNTING TASK FORCE REPORT

Availability

This is to announce that an NRC staff Task Force Report on Material Control and Material Accounting is available for inspection by the public in the Commission's Public Document Room at 1717 H Street, Washington, D.C., and at the Commission's Local Public Document Rooms.

The Task Force was chartered to do the following:

1. Define the roles and objectives of material control and material accounting in the NRC safeguards program;
2. Recommend goals for licensee material control and material accounting systems;
3. Assess the extent to which the current regulatory base meets the proposed goals; and
4. Provide direction for material control and material accounting development, including both near and long-term upgrades.

The scope of the report is limited to licensees possessing significant amounts of strategic special nuclear material (SSNM) in unsealed form.

The Task Force found that the primary role of material control should be to provide continual cognizance of status of nuclear material and that the primary role of material accounting should be to provide long-term assurance that material is present in assigned locations and in correct amounts.

The material control goals developed by the Task Force emphasize timely detection of the loss of five formula kilograms of SSNM through shift item checks, tight custodial control, and the use of process information for safeguards. The material accounting goals emphasize trend analysis of cumulative inventory differences and shipper-receiver differences, and improved measurement and record systems.

The Task Force recommends promulgation of a two-phased Material Control and Material Accounting Upgrade Rule based upon subsequent value-impact analysis of the proposed goals. The Task Force also recommends that action criteria (investigation, reinventory, shutdown) or inventory differences be based upon detecting with high probability the loss of a fixed quantity (5 formula kilograms)

of material, rather than upon a percentage of throughput.

As part of its consideration process, the Commission invites the views of the public. All interested persons who desire to submit written comments on the report and its recommendations should send them by July 15, 1978 to the Director, Division of Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Copies of the comments received in response to this notice will be placed in the Commission's Public Document Room in Washington, as received.

The report consists of an Executive Summary (7 pages), a Summary (34 pages) and three other volumes (totaling 434 pages). Single copies of the Executive Summary and the Summary, or of the entire report, may be obtained without charge, to the extent of supply, by writing to the Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

After the existing stock is exhausted, copies are available from the National Technical Information Service, Springfield, Va. 22161, at current rates.

Dated at Silver Spring, Md., this 24th day of April 1978.

For the Nuclear Regulatory Commission.

ROBERT F. BURNETT,
Director, Division of Safeguards
[FR Doc. 78-12171 Filed 5-2-78; 8:45 am]

[7590-01]

RISK ASSESSMENT REVIEW GROUP

Meeting

Pursuant to the Federal Advisory Committee Act (Pub L. 92-463), notice is hereby given of a 2-day open meeting of the Risk Assessment Review Group of the U.S. Nuclear Regulatory Commission (NRC), to be held at 8:30 a.m., on May 23 and 24, 1978, in Room 1167 of 1717 H Street NW., Washington, D.C. The purposes of this meeting are to continue the review of the final report of the Reactor Safety Study (WASH-1400) and the peer comments thereon and to discuss subjects that might be included in the report of the Review Group. This meeting may be extended a day or so if deemed necessary by the Chairman.

The Risk Assessment Review Group is an independent group established by the NRC (42 FR 34955) for the purpose of providing advice and information to the Commission regarding the final report of the Reactor Safety Study, WASH-1400 (NUREG-75/014), and the peer comments on the study, advice, and recommendations on developments in the field of risk assessment methodology and courses of action

which might be taken on future development and use of risk assessment methodology. This advice and information will assist the Commission in establishing policy regarding the use of risk assessment in the regulatory process. It will also clarify the achievements and limitations of the Reactor Safety Study. The Review Group will submit a report to the Commission on or before July 1, 1978.

In carrying out these assignments, it is anticipated that a number of working sessions will be scheduled at different locations, with notification to the public well in advance of each meeting. With respect to public participation in the meeting, the following requirements shall apply:

(a) Persons wishing to submit written statements regarding the agenda may do so by providing 10 readily reproducible copies to the Review Group at the beginning of the meeting. Comments should be limited to areas within the Group's purview. Persons desiring to mail written comments may do so by sending a readily reproducible copy thereof in time for consideration at this meeting. Comments postmarked no later than May 16, 1978, to Dr. John H. Austin, Office of Policy Evaluation, NRC, Washington, D.C. 20555, will normally be received in time to be considered at this meeting. Of course, comments not received in time for this meeting will be circulated to the members of the Review Group for consideration at a future meeting. Comments should pertain to the field of risk assessment methodology or should be based on the final report of the Reactor Safety Study, copies of which are available for public inspection at:

The NRC Public Document Room, 1717 H Street, NW., Washington, D.C. 20555,

or

NRC's five Regional Offices of Inspection and Enforcement

REGION I

631 Park Avenue, King of Prussia, Pa. 19406.

REGION II

Suite 1217, 230 Peachtree Street, Atlanta, Ga. 30303.

REGION III

799 Roosevelt Road, Glen Ellyn, Ill. 60137.

REGION IV

Suite 1000, 611 Ryan Plaza Drive, Arlington, Tex. 76012.

REGION V

Suite 202, 1990 North California Boulevard, Walnut Creek, Calif. 94596.

Copies of the Final Report may be obtained from:

U.S. Nuclear Regulatory Commission, Office of Nuclear Regulatory Research,

Probabilistic Analysis Staff, Attn: Melea S. Fogle, telephone: 301-492-8377, 7735 Old Georgetown Road, Bethesda, Md. 20014.

(b) Persons desiring to make an oral statement at the meeting should make a request to do so prior to the meeting, identifying the topics and desired presentation time so that appropriate arrangements can be made. The time allotted for such statements will be at the discretion of the Chairman. The Review Group will receive oral statements on topics relevant to its purview at an appropriate time chosen by the Chairman.

(c) Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call on May 22, 1978, to the Office of Policy Evaluation, telephone 202-254-5184, Attn: John Austin, between 8:15 a.m. and 5 p.m. e.d.t.

(d) Questions may be asked only by members of the Review Group.

(e) Statements of views or expressions of opinion made by members of the Review Group at open meetings are not intended to represent final determinations or beliefs.

(f) The use of still, motion picture, and television cameras, the physical installation and presence of which will not interfere with the conduct of the meeting, will be permitted both before and after the meeting and during any recess. The use of such equipment will not, however, be allowed while the meeting is in session.

(g) A copy of the minutes of the meeting will be available for inspection on or after June 30, 1978, at the NRC Public Document Room, 1717 H Street NW., Washington, D.C. Copies may be obtained upon payment of appropriate charges.

Dated at Washington, D.C., this 27th day of April 1978.

JOHN C. HOYLE,
Advisory Committee
Management Officer.

[FR Doc. 78-11990 Filed 5-2-78; 8:45 am]

[7590-01]

[Docket No. 50-312]

SACRAMENTO MUNICIPAL UTILITY DISTRICT, RANCHO SECO NUCLEAR STATION, UNIT NO. 1

Order for Modification of License

I.—The Sacramento Municipal Utility District (the licensee), is the holder of Facility Operating License No. DPR-54 which authorizes the operation of the nuclear power reactor known as Rancho Seco Nuclear Station, Unit No. 1 (the facility) at steady

reactor power levels not in excess of 2772 megawatts thermal (rated power). The facility consists of a Babcock & Wilcox Co. designed pressurized water reactor (PWR) located at the licensee's site in Sacramento County, Calif.

II.—In accordance with the requirements of the Commission's ECCS Acceptance Criteria, 10 CFR 50.46, the licensee submitted on July 8, 1975, an ECCS evaluation for the facility. The ECCS performance submitted by the licensee was based upon an ECCS Evaluation Model developed by the Babcock & Wilcox Co. (B&W), the designer of the Nuclear Steam Supply System for this facility. The B&W ECCS Evaluation Model had been previously found to conform to the requirements of the Commission's ECCS Acceptance Criteria, 10 CFR part 50.46 and appendix K. The evaluation indicated that with the limits set forth in the facility's Technical Specifications, the ECCS cooling performance for the facility would conform with the criteria contained in 10 CFR 50.46(b) which govern calculated peak clad temperature, maximum cladding oxidation, maximum hydrogen generation, coolable-geometry, and long-term cooling.

On April 12, 1978, B&W informed the NRC that it had determined that in the event of a small break LOCA on the discharge side of a reactor coolant pump, high pressure injection (HPI) flow to the core could be reduced somewhat. Subsequent calculations indicated that in such a case the calculated peak clad temperature might exceed 2,200 F.

Previous small break analyses for B&W 177 fuel assembly (FA) lowered loop plants had identified the limiting small break to be in the suction line of the reactor coolant pump. Recent analyses have shown that the discharge line break is more limiting than the suction line break.

The Rancho Seco Nuclear Station, Unit No. 1, has an ECCS configuration which consists of Two high pressure injection (HPI) trains. Each train has a HPI pump and the train injects into two of the four reactor coolant system (RCS) cold legs on the discharge side of the RCS pump. (There is also a third HPI pump installed.) The two parallel HPI trains are connected but are kept isolated by manual valves (known as the cross-over valves) that are normally closed. Upon receiving a safety injection signal the HPI pumps are started and valves in the four injection lines are opened. Assuming loss of offsite power and the worst single failure (failure of diesel to start) only one HPI pump would be available and two of the four injection valves would fail to open.

If a small break is postulated to occur in the RCS piping between the

RCS pump discharge and the reactor vessel, the high pressure injection flow injected into this line (about half of the output of one high pressure pump) could flow out the break. Therefore, for the worst combination of break location and single failure, only one-half of the flow rate of a single high pressure ECCS pump would contribute to maintaining the coolant inventory in the reactor vessel. This situation had not been previously analyzed and B&W had indicated that the limits specified in 10 CFR 50.46 may be exceeded.

B&W has stated that they have analyzed a spectrum of small breaks in the pump discharge line and have determined that to meet the limits of 10 CFR 50.46, operator action is required to open the two manual operated cross-over valves and to manually align the two motor driven isolation valves which had failed to open. This would allow the flow from the one HPI pump to feed all four reactor coolant legs. B&W has assumed that 30 percent of the flow would be lost through the break and 70 percent would refill the core. The licensee has committed to provide for the necessary operator actions within the required time frame. That is, in the event of a small break and a limiting single failure, manual action will be taken to begin opening these valves within 5 minutes and have them fully opened and an adequate flow split obtained within 10 minutes. To facilitate this operation the licensee has committed to maintain one of the series-connected, manually operated cross-over valves normally open. The analyses performed by B&W assumed that the flow split was established at 650 seconds by operator action. We conclude that the analyses are a reasonable approximation of the operator action that actually will be taken, provided specific procedures are prepared and followed to assure such action.

B&W has stated that a 0.15 ft² discharge line break, with the aforementioned operator actions, is the most limiting case. To arrive at this conclusion, B&W has performed analyses at break sizes of 0.3, 0.2, 0.15, 0.1, and 0.04 ft². The results, which were obtained using an approved appendix K model for blowdown, indicate core uncover for about 500 seconds for the 0.15 ft² break. For this break size B&W has conservatively calculated the peak clad temperature to be approximately 1,760 F; well below the limits of 10 CFR 50.46(b).

B&W has indicated the manner in which the calculational methods have been revised and has indicated that their revised calculations are wholly in conformance with the requirements of 10 CFR 50.46. However, B&W has not yet had the opportunity to fully present the result of its calculations to

the licensee for submittal to the NRC staff, and the staff has accordingly not had the opportunity to fully assess the new calculations. Until the licensee and the staff have an opportunity to review the B&W revised calculations, the staff has recommended and the licensee has agreed, that operating conditions be limited to a range in which ECCS performance for small break conditions is less sensitive to specific calculation inputs.

For this facility with operation up to 2,311 Mwt, ECCS performance calculations for the limiting small break does not even result in core uncovering, if appropriate operator action is properly taken (as described above), thus providing a very substantial margin on peak clad temperature below the limits of 10 CFR 50.46(b). For other reasons which are not safety-related, however, the plant is limited to a maximum power of about 2,080 megawatts thermal until approximately August 1978. At this lower power level, the safety margin on peak clad temperature will be even greater.

Therefore, until the staff has had the opportunity to fully assess the B&W revised calculations, operation of the facility at the power level specified in this Order, and in accordance with the operating procedures specified in this Order, will assure that the ECCS will conform to the performance requirements of 10 CFR 50.46(b). Accordingly, such limits provide reasonable assurance that the public health and safety will not be endangered. Upon notification by the NRC staff, the licensee committed to provide the staff with B&W's reevaluation of ECCS performance applicable to the licensee's facility as promptly as possible, to submit a technical specification requiring appropriate operating procedures to assure required operator action as discussed herein, and affirmed that plant operation was limited to the maximum power level specified herein. Such procedures were described and the commitments confirmed by the licensee's letter of April 14, 1978, supplemented by letter dated April 21, 1978. The staff believes that the licensee's action, under the circumstances, is appropriate and that this action should be confirmed by NRC Order. Upon satisfactory completion of our assessment of the revised evaluation, we will accordingly modify the authorization to operate the facility.

III.—Copies of the following documents are available for inspection at the Commission's Public Document Room at 1717 H Street, Washington, D.C. 20555, and are being placed in the Commission's local public document room at the Sacramento City-County Library, Sacramento, Calif.

(1) Letters from J. J. Mattimoe to Mr. R. W. Reid, Chief, Operating Re-

actors Branch No. 4, dated April 17 and 21, 1978.

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended and the Commission's rules and regulations in 10 CFR parts 2 and 50, *It is ordered*, That Facility Operating License No. DPR-54 is hereby amended by adding the following new provisions:

(1) As soon as possible, the licensee shall submit a reevaluation wholly in conformance with 10 CFR 50.46 of ECCS cooling performance calculated in accordance with the B&W Evaluation Model for operation with operating procedures described in its letters of April 14, and April 21, 1978, except that the time for completion of operator action shall be 10 minutes after initiation of the event.

(2) Until further authorization by the Commission, the power level shall not exceed 2,080 Mwt, and

(3) Until further authorization by the Commission, the licensee shall operate in accordance with the procedures described in its letter of April 14, 1978, supplemented by letters dated April 21, 1978, except that the maximum time for completion of operator action shall be 10 minutes after initiation of the event.

Dated at Bethesda, Md., this 26th day of April 1978.

For the Nuclear Regulatory Commission.

VICTOR STELLO, Jr.,
Director, Division of Operating
Reactors, Office of Nuclear Re-
actor Regulation.

[FR Doc. 78-11993 Filed 5-2-78; 8:45 am]

[8010-01]

SECURITIES AND EXCHANGE COMMISSION

[Release No. 14703; SR-CBOE-78-51]

CHICAGO BOARD OPTIONS EXCHANGE, INC.

Order Approving Proposed Rule Change

APRIL 25, 1978.

On February 28, 1978, the Chicago Board Options Exchange, Inc. ("CBOE"), La Salle at Jackson, Chicago Ill. 60603, filed with the Commission, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and rule 19b-4 thereunder, copies of a proposed rule change which provides a means by which CBOE members may lease their Exchange memberships to qualified broker-dealers.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission release (Securities Exchange Act Release No. 34-14551, March 10, 1978) and by publication in the FEDERAL REGISTER (43 FR 11629, March 20,

1978). All written statements with respect to the proposed rule change which were filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552) were made available to the public at the Commission's Public Reference Room.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and in particular, the requirements of section 6 and the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-11980 Filed 5-2-78; 8:45 am]

[8010-01]

[Release No. 34-14704; File No. SR-CBOE-1978-8]

CHICAGO BOARD OPTIONS EXCHANGE, INC.

Self-Regulatory Organizations; Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on March 31, 1978, Chicago Board Options Exchange, Inc. ("CBOE") filed with the Securities and Exchange Commission a proposed rule change as follows:

STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

Rule 7.6. A Board Broker's Duty to Report Unusual Activity.

Interpretations and Policies:

[Italics indicate new material]

.01 *To the extent unusual activity is apparent only through the inspection of trade tickets, a Board Broker is not responsible for reporting such activity unless the trade tickets are brought to his attention.*

Exchange's Statement of Basis and Purpose

The purpose of the proposed rule change is to clarify the general obligation of a Board Broker to report unusual conditions as described in CBOE Rule 7.6. This clarification of a Board Broker's general reporting obligation is required in light of planned changes in the CBOE price reporting system.

The typical method of price reporting on the floor of the CBOE calls for a seller to time stamp a price reporting ticket, and to place the ticket in a tray located at the Board Broker station. This ticket is then removed by the Board Broker or his staff, last sale information is updated on the screens on the trading floor, and the ticket is then forwarded to an Exchange price reporter for public dissemination of last sale information. Under this procedure, a Board Broker has the opportunity, which he may or may not take, to review every ticket before its dissemination; however, the system is prone to inefficiencies, especially in very active markets in which Board Brokers find it difficult to both forward price reporting tickets and to operate their book. Any delay in the forwarding of the trade tickets by the Board Broker to the price reporter causes tickets to be handed to the price reporter in large bunches, which in turn may cause late dissemination of price reports and sequencing difficulties.

In view of such possible problems resulting from the manual method of forwarding price reporting tickets, the CBOE's Board of Directors has approved the installation of a conveyor belt around each half of a trading post. The conveyor belt will accept price reporting tickets from the trading crowd, and will move these tickets directly to the end of the post where last sale information is disseminated by an Exchange employee. The use of the belt system will result in a quicker, more accurately sequenced public record of trading activity. The belt system will, however, remove from the Board Broker his opportunity to inspect every price report before it is disseminated. There are compensatory safeguards for the loss of immediate Board Broker inspections built into the price reporting system: for example, if a price reporting ticket shows a price outside the Board Broker's book, or a price which matches the bids or offers displayed by such book, a "See Board Broker" message appears on the terminal. These trade tickets are then brought to the attention of the Board Broker by Exchange staff, and require the Board Broker's approval before being entered into the system. A selective options monitor is also planned for display to the trading crowd so that a record of every reported transaction will be visible to all traders in the trading crowd, and exposes every reported transaction to self-policing by the crowd.

The proposed rule change does not relieve the Board Broker from all responsibility to report unusual activity, but rather that activity which is only apparent by reviewing trade tickets. It remains incumbent upon the Board Broker to monitor the crowd by all

other available means, e.g., the planned selective options monitor and personal observation of traders' activity. If the Board Broker suspects unusual activity, trading tickets are available at the post for his review.

The basis of this proposed rule change is Section 6(b)(5) of the Act, for the proposal facilitates the transmission of information with respect to options transactions to the public which operates to protect investors and the public interest. Moreover, the introduction of improved means of transmitting options price information, and the clarification of existing rules so as to expedite the implementation of such improvements is consistent with the Congressional position stated in Section 11A(a)(1)(C)(iii) of the Act.

No comments were solicited from members regarding this proposed change.

The Exchange does not believe that this proposal will impose any burden upon competition.

The foregoing rule change has become effective, pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and all written submissions, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Public Reference Room, 1100 L Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the file number referenced in the caption above and should be submitted on or before May 23, 1978.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

APRIL 25, 1978.

[FR Doc. 78-11985 Filed 5-2-78; 8:45 am]

[8010-01]

[Release No. 20518; 70-6155]

GEORGIA POWER CO.**Proposed Acquisition of Electric Distribution System**

APRIL 26, 1978.

Notice is hereby given that Georgia Power Company ("Georgia"), 270 Peachtree Street, NW., Atlanta, Ga. 30303, an electric utility subsidiary of The Southern Company, a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 9(a) and 10 of the Act as applicable to the proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

Mississippi proposes to acquire from the United States of America, acting by and through the Administrator of General Services (the "Government"), the electrical distribution system located at and serving the area which was formerly the Glynco Naval Air Station, located near Brunswick in Glynn County, Georgia. Such electrical distribution system includes all primary and secondary overhead lines, street lights, poles with attachments, transformers, switches, easements, and rights appurtenant thereto located at the site of such naval air station, other than the airfield runway lighting and other electrical equipment directly related to the operation of the air terminal and airport facilities located upon such site.

Georgia is to pay the Government in respect of such distribution system a purchase price of \$117,000 in cash, as was determined by negotiations between the parties. The original cost to the Government of such system was \$1,504,904. The Government does not maintain any records as to the depreciation of such property. Georgia estimates that the current value of such distribution system is approximately \$190,000.

Georgia has historically served the Glynco Naval Air Station through one metering point. When the U.S. Navy closed the air station, the distribution system was conveyed to the Government as surplus property. Georgia's purchase of such distribution system will enable Georgia to continue to service its customers upon the site of the air station without having to construct a new system.

It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction. Information as to fees and expenses to be incurred in connection with the proposed transaction are to be filed by amendment.

Notice is further given that any interested person may, not later than

May 25, 1978, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-11981 Filed 5-2-78; 8:45 am]

[8010-01]

[File Nos. 2-61324, 22-9576, 3-5436]

GENERAL AMERICAN TRANSPORTATION CORP.**Application and Opportunity for Hearing**

MAY 1, 1978.

Notice is hereby given that General American Transportation Corp. (the "Company") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Commission that the trusteeship of Citibank, N.A. (the "Bank") under three indentures heretofore qualified under the Act, and a new indenture, which is to be qualified under the Act, is not as likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as trustee under any of the indentures.

Section 310(b) of the Act provides, in part, that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall within ninety days after ascertaining that it has such conflicting interest

either eliminate such conflicting interest or resign. Subsection (1) of this section provides, with certain exceptions, that a trustee is deemed to have a conflicting interest if it is acting as trustee under another indenture of the same obligor. However, pursuant to clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture or indentures under which other securities of such obligor are outstanding, if the issuer shall have sustained the burden of proving on application to the Commission, and after opportunity for hearing, thereon, that trusteeship under the qualified indenture and such other indenture is not likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under any of such indentures.

The Company alleges that:

1. Applicant was incorporated in June 1975 as a wholly-owned subsidiary of GATX Corp. (formerly known as General American Transportation Corp.). On July 1, 1975, in connection with the restructuring of GATX Corp. from a combined operating and holding company to a holding company, Applicant was assigned the rights of GATX Corp. under its 17 then existing Equipment Trust Agreements (including the Series 61, 64, and 67 Equipment Trust Agreements referred to in paragraph 2 below) and assumed the obligations of GATX Corp. thereunder. Since July 1, 1975, two equipment trusts have been fully paid and terminated, and Applicant has issued equipment trust certificates under its Series 73 and Series 74 Equipment Trust Agreements.

2. It has outstanding three Equipment Trust Agreements for General American Transportation Corp. Equipment Trusts Series 61, 64, and 67 which are three of the 17 presently existing equipment trusts referred to above. Of the \$40 million principal amount of Series 61 certificates issued, \$14 million remains outstanding. The Series 61 Indenture was filed December 13, 1963. Of the \$25 million principal amount of Series 64 certificates issued, \$12.5 million remains outstanding. The Series 64 Indenture was filed July 13, 1967. Of the \$60 million principal amount of Series 67 certificates issued, \$42 million remains outstanding. The Series 67 Indenture was filed October 30, 1970.

3. It proposes to issue and sell approximately \$60,000,000 in principal amount of General American Transportation Corp. Equipment Trust, Series 75, to be issued under an Indenture ("new indenture") which will be qualified under the Act.

4. The indenture dated as of May 15, 1978, is, and the new indenture will be,

secured by a separate lot of identified railroad cars, so that should the Bank have occasion to proceed against the security under one of these trusts, such action would not affect the security, or the use of any security, under any other trust.

5. The differences in the provision of the four indentures are not so likely to involve the Bank in a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as Trustee under any of the indentures.

The Company waives notice of hearing and waives hearing and waives any and all rights to specify procedures under Rule 8(b) of the Commission's Rules of Practice with respect to the application.

The period of notice hereinafter specified appears to be reasonable in the circumstances.

For a more detailed account of the matters of fact and law asserted, all persons are referred to said application, which is a public document on file in the offices of the Commission at 500 North Capitol Street NW., Washington, D.C. 20549.

Notice is further given that any interested person may, not later than May 10, 1978, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and the interest of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-12235 Filed 5-2-78; 8:45 am]

[8010-01]

[Release No. 20519; 54-258]

LYKES BROS., INC.

Filing of Plan for Compliance With Divestiture
Order

APRIL 26, 1978.

Notice is hereby given that Lykes Bros., Inc. ("Lykes"), P.O. Box 1690, Tampa, Fla. 33601, a holding company, has filed a plan ("Plan") pursuant to Section 11(e) of the Public Utility

Holding Company Act of 1935 ("Act") for the divestiture by Lykes of its interest in the common stock of Peoples Gas System, Inc. ("Peoples"), a gas utility company. All interested persons are referred to the Plan, which is summarized below, for a complete description of Lykes' proposals.

Lykes and its several nonutility subsidiaries are engaged in a diversified line of ranch and farm product operations throughout Florida and in parts of Georgia and Texas. The company also controls a major commercial bank in Florida. Lykes has issued an outstanding 18,792 shares of common stock held by approximately 177 shareholders. The stock is not actively traded.

In June 1976, Lykes acquired substantially all of the voting and nonvoting common stocks of Peoples, a retail natural gas distribution company incorporated in Florida and serving approximately 124,000 customers in two separate areas of that state. Peoples' rates and service are subject to the jurisdiction of the Florida Public Service Commission. At September 30, 1977, Peoples reported net utility plant of \$35,351,031, and, for the twelve months then ended, gross revenues of \$29,929,376.

In anticipation of its acquisition of Peoples, Lykes filed with the Commission a statement under Rule 2 claiming the benefit of an exemption under Section 3(a)(1) of the Act. The Commission terminated Lykes' exemption under Rule 2 on December 22, 1976, pursuant to Rule 6, after concluding that there was a "substantial question" as to Lykes' entitlement to such claimed exemption. In accordance with the Commission's notification, Lykes thereupon filed a formal application under Section 3(a) for an unqualified order of exemption. The Commission's Division of Corporate Regulation ("Division") contested the application. The Division and Lykes agreed to a stipulated record, and the parties filed their opposing briefs. (File No. 31-758; Administrative Proceeding File No. 3-5234).

After briefing the issues, but before a decision on the merits of the case, Lykes amended its application to request a qualified exemption under Section 3(a)(1), and to consent to the entry of an order under Section 11(b)(1) directing Lykes to dispose of its interest in Peoples. In its Memorandum Opinion and Order of April 6, 1978, the Commission approved the terms of Lykes' amended application and entered the appropriate order under Section 11(b)(1) and directed Lykes to file a plan for compliance with that order as soon as practicable. (HCAR No. 20487). Lykes has registered as a holding company pursuant to Section 5(a) of the Act for the limited purpose of complying with the di-

vestiture order under Section 11(b)(1). Its Plan for compliance is a voluntary plan under Section 11(e). Under the Plan, Lykes proposes to distribute to its shareholders all of the common stock of Peoples now owned by Lykes, comprising 1,111,924.53 shares, or approximately 99%, of all of the issued and outstanding common stock of Peoples. In anticipation of the distribution, the articles of incorporation of Peoples were amended to change Peoples' voting and nonvoting common stock to a single class of voting common stock. Peoples' stock will be distributed to Lykes' shareholders on the basis of 59.1701 shares of Peoples for each share of Lykes.

The Plan further provides that no more than one-third of the members of the board of directors of Peoples (to consist initially of six members) may serve concurrently as members of the board of directors of Lykes; that upon the divestiture, there will be no common operating officers of Peoples and Lykes, with the exception of one individual, who will serve as Comptroller of Lykes and Senior Vice President and Comptroller of Peoples; and that, with the exceptions noted, no person, nor any immediate member of such person's family, who has served as an officer or director of Lykes or any of its subsidiaries, shall be eligible to serve in either capacity with Peoples, until the expiration of the three year period from the date such persons ceased to serve with Lykes or any of its subsidiaries.

It is stated that no state or federal commission, other than this Commission, has jurisdiction over the distribution of Peoples stock in compliance with the Commission's Section 11(b)(1) order. A statement of the fees in connection with the Plan will be supplied by amendment.

Notice is further given that any interested person may, not later than May 15, 1978, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said Plan which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon Lykes at the above-stated address, and proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the Plan, as filed or as it may be amended, may be approved in the manner provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may take such other action as it

may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including notice of the date of the hearing (if ordered) or any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-11982 Filed 5-2-78; 8:45 am]

[8010-1]

[Release No. 20517; 70-6154]

MIDDLE SOUTH UTILITIES, INC. AND LOUISIANA POWER & LIGHT CO.

Proposal by Subsidiary Company To Issue and
Sell Common Stock to Holding Company

APRIL 26, 1978.

Notice is hereby given that Middle South Utilities, Inc. ("Middle South"), 225 Baronne Street, New Orleans, La. 70112, a registered holding company, and its electric utility subsidiary company, Louisiana Power & Light Co. ("Louisiana"), 142 Delaronde Street, New Orleans, La. 70174, have filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 7, 9(a), 10, and 12(f) of the Act and Rule 43 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transaction.

Louisiana proposes to issue and sell to Middle South, and Middle South proposes to acquire 3,788,000 additional shares of its presently authorized but unissued common stock, no par value, for an aggregate cash purchase price of \$25,000,000. Louisiana presently has outstanding 46,200,000 shares of common stock, no par value, having an aggregate stated value on its books of \$303,900,000, all of which shares are owned by Middle South. Louisiana intends to apply the proceeds of such sale to the payment of short-term indebtedness incurred for the partial financing of Louisiana's construction program, estimated at \$206,800,000 for 1978, and for other corporate purposes.

Louisiana and Middle South believe it is preferable for sales of the new common stock to be timed to coincide with Louisiana's cash needs from time to time, which are primarily determined by the nature and pace of its construction program. Accordingly, Louisiana and Middle South have requested that the Commission's order permit the sale of the new common stock to occur from time to time at

any time through and including December 31, 1978, in increments to be determined by Louisiana and Middle South.

It is stated that no special or separate expenses are anticipated in connection with the proposed transaction except for the filing fee paid to this Commission and for legal fees estimated at \$2,000. It is further stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than May 25, 1978, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-11983 Filed 5-2-78; 8:45 am]

[8010-01]

[Release No. 34-14689; File No. SR-NYSE-78-20]

NEW YORK STOCK EXCHANGE, INC.

Self-Regulatory Organizations; Proposed Rule
Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on March 23, 1978, the above-mentioned self-regulatory organization filed with the Securities

and Exchange Commission a proposed rule change as follows:

EXCHANGE'S STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

The rule as proposed to be amended would essentially retain existing requirements regarding training and examination but would add a new flexibility in accommodating the needs of registered representatives who intend to limit their activities to such specialized areas as investment company securities and variable contracts, real estate securities, and direct participation programs. Accordingly, such persons would qualify in accordance with the functions they will perform and the services they will afford. The rule contemplates acceptance of qualification requirements imposed by other (self) regulatory bodies.

TEXT OF PROPOSED RULE CHANGE

The text of Rule 345.15 as proposed to be amended is attached as Exhibit 1-A.

EXCHANGE'S STATEMENT OF THE PURPOSE OF THE PROPOSED RULE CHANGE

The purpose of the proposed change is to permit registered representatives to qualify with the Exchange in accordance with their activities and functions. The proposed Rule change is in harmony with the approach reflected in proposed SEC Rule 15b7-1 under the Exchange Act. Among specialized activities to be recognized are: investment company securities and variable contracts, real estate securities, and direct participation programs. In order to accommodate future developments, the Rule anticipates recognition for other specializations, subject to appropriate qualification. The provisions proposed for deletion are either redundant or unnecessary in light of the proposed revised language.

The proposed rule would continue the concept of a registered representative who would be qualified to solicit the sale or purchase of all securities or other similar instruments. The usual training requirement for such registered representative candidate, without actual experience, would continue to be four months after which passing a qualification examination acceptable to the Exchange is required.

Registered Representative candidates who intend to engage solely in specialized activities must qualify by meeting such training and examination requirements acceptable to the Exchange for the specific security or financial service involved. The Rule envisions the acceptance of qualification requirements imposed by other (self) regulatory bodies and retains the language in the existing Rule concerning training and examination waivers.

EXCHANGE'S STATEMENT OF THE BASIS
UNDER THE ACT FOR PROPOSED RULE
CHANGE

(i) The proposed rule change gives the Exchange the capacity to carry out the purposes of the Act set forth in sections 6(c)(3)(A) and 6(c)(3)(B) which deal with standards of training, experience and competence. Additionally, the proposed rule change is intended to accord with Proposed SEC Rule 15b7-1 which permits qualification in accordance with specialized functions.

(ii) The proposed rule change will have the effect of widening opportunities for access by persons desiring to become associated with a member organization.

(iii) Not applicable.

(iv) Not applicable.

(v) The proposed rule is consistent with the Exchange's obligation to promote just and equitable principles of trade in that it will bring salespersons in specialized areas under the supervisory umbrella of Exchange standards. The proposed rule fosters cooperation and coordination with others engaged in regulation in that favorable consideration will be given to the training and/or examination requirements or practices of other (self) regulatory bodies, in lieu of those imposed by the Exchange.

The proposed rule removes impediments to and will aid in perfecting the mechanism of a free and open market and a national market system by the recognition of specialized functions presently permissible under NASD provisions and contemplated by proposed SEC Rule 15b7-1.

The protection of investors and of the public interest will be furthered by the proposed rule change in that these persons will be regulated under the high standards of conduct already set forth in the Exchange's rules.

(vi) Once registered, all persons to whom the Rule is applicable become subject to the Exchange's jurisdiction to impose discipline for violation of the provisions of the Act, the rules or regulations thereunder and the Constitution and Rules of the Exchange.

(vii) Not applicable.

(viii) Not applicable.

COMMENTS RECEIVED FROM MEMBERS,
PARTICIPANTS OR OTHERS ON PRO-
POSED RULE CHANGE

While comments were not solicited in regard to this proposal, E. F. Hutton & Co., Inc. made a formal request that the Exchange adopt a change such as is now proposed to set different qualifications for persons who would engage solely in a specialized area.

BURDEN ON COMPETITION

This proposal will not impose any burden on competition and is likely to

diminish any burden which would exist were the Exchange not to recognize specialized functions.

On or before June 7, 1978, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street NW., Washington D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before May 24, 1978.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

APRIL 20, 1978.

New language italicized. Deleted language in [brackets].

EXHIBIT 1-A

Rule 345.15 As Proposed To Be Amended

15 Acceptability.

(1) Each registered representative, whatever the nature or extent of his activity, must qualify by meeting the training requirement and by passing a qualification examination acceptable to the Exchange.

(2) Applications for registered representative candidates will be considered by the Exchange for those duly qualified persons whose activities are limited solely to the solicitation of the sale or purchase of: investment company securities and variable contracts, real estate securities, and direct participation programs.

(3) Additionally, the Exchange will consider applications for registered representative candidates engaged in limited activities other than those enumerated in (2) above.

(4) (a) [Training—] The usual requirement for training candidates without previous actual experience is four months. The training period may be reduced or waived by the Exchange if the candidate for registration has had some previous actual experience in the securities business as a principal or employee, or in a closely allied field (such as a bank trust officer).

[Examinations—Near the close of the training period, candidates for registration are normally required to pass a qualifying Exchange examination. A Study Outline for Registration Examination describes the qualifying examination in detail. The work of most registered representatives demands a depth of knowledge of corporate securities especially stocks. The examination is designed to meet this demand. It tests on a broad range of securities knowledge, and in depth on corporate stocks.

Any individuals who are engaged in the solicitation or handling of business in, or the sale of, commodities future contracts must demonstrate their competency by satisfying a solicitors examination requirement of a national commodities exchange, which examination is acceptable to the New York Stock Exchange. Any individual engaged in the purchase or sale of securities, or other similar instruments for the account of his employer must demonstrate his competency by satisfying an examination requirement acceptable to the New York Stock Exchange.

(See Rule 342.13 Para. 2342.13 for examination requirements of supervisors.)

(b) If the candidate is advanced in years, or suffers from a physical infirmity or health condition which might be seriously aggravated by a required examination, the examination requirement may be waived at the discretion of the Exchange: *Provided*, The firm certified that the candidate has been adequately trained.

(See Rule 342.13 Para. 2342.13 for examination requirements of supervisors.)

(c) Consideration will also be given to the training and/or examination requirements or practices of other (self) regulatory bodies, and satisfaction of such requirements may be accepted by the Exchange in lieu of those imposed by it.

(5) Individuals who are engaged in the solicitation or handling of business in, or the sale of, commodities futures contracts must demonstrate their competency by satisfying a solicitors examination requirement of a national commodities exchange, which examination is acceptable to the Exchange. Individuals engaged in the purchase or sale of securities, or other

similar instruments for the account of their employer must demonstrate their competency by satisfying an examination requirement acceptable to the Exchange.

[FR Doc. 78-11986 Filed 5-2-78; 8:45 am]

[8010-01]

[Release No. 14705]

PACIFIC STOCK EXCHANGE, INC.

Applications for Unlisted Trading Privileges and of Opportunity for Hearing

APRIL 26, 1978.

The Pacific Stock Exchange, Inc. ("PSE") has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 (the "Act") and Rule 12f-1 thereunder for unlisted trading privileges in the securities of the companies as set forth below, which securities are registered with the Commission pursuant to Section 12 of the Act or which would be required to be so registered except for the exemption from registration provided in subsection (g)(2)(B) or (g)(2)(G) of section 12.¹

United Canso Oil & Gas, Ltd., common stock, \$1 par value (Canadian), File No. 7-5022.

Canada Southern Petroleum, Ltd., common stock, \$1 par value (Canadian), File No. 7-5023.

United Canso Oil & Gas, Ltd. and Canada Southern Petroleum, Ltd. are currently listed on the PSE and the Boston Stock Exchange, Inc. ("BSE"). These companies have filed applications to withdraw from listing and registration on the PSE and BSE, which applications are currently pending before the Securities and Exchange Commission.

Upon receipt of a request, on or before May 23, 1978, from any interested person, the Commission will determine whether the applications with respect to the companies named shall be set down for hearing. Any such request should include a brief statement as to the title of the security in which the person is interested, the nature of his interest in making the request, and the position which he proposes to take

at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said applications by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, not later than the date specified. If no one requests a hearing with respect to the particular applications, such applications will be determined by order of the Commission on the basis of the facts therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-11984 Filed 5-2-78; 8:45 am]

[8025-01]

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 1462]

ARKANSAS

Declaration of Disaster Loan Area

Lonoke County and adjacent counties within the State of Arkansas constitute a disaster area as a result of damage caused by a Tornado which occurred on April 11, 1978. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on June 26, 1978, and for economic injury until the close of business on January 26, 1978, at:

Small Business Administration, District Office, 611 Gaines Street, Suite 900, Little Rock, Ark. 72201,

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: April 26, 1978.

PATRICIA M. CLOHERTY,
Acting Administrator.

[FR Doc. 78-12055 Filed 5-2-78; 8:45 am]

[8025-01]

[License No. 01/01-0289]

CAPITAL ASSISTANCE CORP. OF CONNECTICUT

Issuance of License to Operate as a Small Business Investment Company

On March 13, 1978, a notice was published in the FEDERAL REGISTER that Capital Assistance Corp. of Connecticut, 33 Brook Street, West Hartford, Conn. 06110, had filed an application with the Small Business Administration (SBA) pursuant to section 107.102 of the regulations governing small business investment companies (13 CFR 107.102 (1977)) for a license to operate as a small business investment company.

Interested parties were given until the close of business on March 28, 1978, to submit written comments on the application to the SBA.

Notice is hereby given that no written comments were received, and having considered the application and all other pertinent information, the SBA approved the issuance of License No. 01/01-0289 on April 24, 1978, to Capital Assistance Corp. of Connecticut pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended.

(Catalogue of Federal Domestic Assistance Program No. 59.011 Small Business Investment Companies.)

Dated: April 25, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator
for Investment.

[FR Doc. 78-12061 Filed 5-2-78; 8:45 am]

[8025-01]

[Amendment No.; Declaration of Disaster Loan Area No. 1413]

KANSAS

Declaration of Disaster Loan Area

The above numbered declaration (see 43 FR 2966), amendment No. 1 (see 43 FR 4892), amendment No. 2 (see 43 FR 8604), amendment No. 3 (see 43 FR 12140), and amendment No. 4 (see 43 FR 16232), are amended by adding the following county:

County	Natural disaster(s)	Dates
Leavenworth	Drought conditions in the north one-third of the county.	Jan. 1 to Sept. 30, 1977.
Do	Excessive rainfall in two-thirds of the county	June 20 to Nov. 30, 1977.

¹These are not the first applications for unlisted trading privileges pursuant to section 12(f)(1)(C) of the Act to be filed with the Commission. The Commission currently has pending before it a PSE application for unlisted trading privileges pursuant to section 12(f)(1)(C) in the common stock of Pacific Resources, Inc. (File No. 7-4933).

and adjacent counties within the State of Kansas due to natural disasters as indicated. All other information remains the same; i.e., the termination date for filing applications for physical damage is close of business on August 31, 1978, and for economic injury until close of business on November 30, 1978.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: April 22, 1978.

A. VERNON WEAVER,
Administrator.

[FR Doc. 78-12056 Filed 5-2-78; 8:45 am]

[8025-01]

[License No. 04/04-0137]

LaBARON CAPITAL CORP.

Application for License as a Small Business Investment Company (SBIC)

Notice is hereby given of the filing of an application with the Small Business Administration (SBA), pursuant to section 107.102 of the regulations (13 CFR 107.102 (1977)), under the name of LaBaron Capital Corp., 4900 Bayou Boulevard, Suite 106, Pensacola, Fla. 32503, for a license to operate in the State of Florida as a Small Business Investment Company (SBIC) under the provisions of the Small Business Investment Act of 1958 (Act), as amended (15 U.S.C. 661 et seq.).

The proposed officers, directors, and major stockholders are as follows:

Roy Hess, Chairman of the Board and President, 4900 Bayou Boulevard, Suite 106, Pensacola, Fla. 32503.

Edward K. Edwards, Vice President and Director, 4900 Bayou Boulevard, Suite 106, Pensacola, Fla. 32503.

Malcolm K. Pfeiffer, Secretary and Treasurer, 4900 Bayou Boulevard, Suite 106, Pensacola, Fla. 32503.

James R. Redmond, Vice President and Director, 4900 Bayou Boulevard, Suite 106, Pensacola, Fla. 32503.

Charles S. Liberis, Director and General Counsel, 4900 Bayou Boulevard, Suite 106, Pensacola, Fla. 32503.

The Applicant will begin operations with a capitalization of \$525,000 which will be a source of long-term loans and equity investments for qualified small business concerns.

The Applicant will conduct its operations principally within a 200 mile radius of the city of Pensacola, Fla.,

and in other areas within the United States of America and its territories and possessions as may from time to time be approved by the SBA as its operating territory.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, including adequate profitability and financial soundness in accordance with the Act and regulations.

Notice is further given that any interested person may, not later than fifteen (15) days from the date of publication of this notice, submit written comments on the proposed company to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: April 27, 1978.

PETER F. McNEISH,
Deputy Associate Administrator
for Investment.

[FR Doc. 78-12063 Filed 5-2-78; 8:45 am]

[8025-01]

[Amendment No. 4; Declaration of Disaster Loan Area No. 1407]

MICHIGAN

Declaration of Disaster Loan Area

The above numbered Declaration (See 42 FR 61347), Amendment No. 1 (See 42 FR 634510), Amendment No. 2 (See 43 FR 8605), and Amendment No. 3 (See 43 FR 16233) are amended by adding the following counties:

County	Natural disaster(s)	Dates
Emmet.....	Drought.....	May 1, 1977 to July 6, 1977
Do.....	Excessive rainfall.....	July 7, 1977 to Nov. 30, 1977
Kalkaska.....	Drought (crop season started with ground water low due to 1976 drought).	
Do.....	Late spring frost.....	May 7, 1977, May 9, 1977, June 3, 1977, and June 9, 1977
Do.....	Drought.....	April 1, 1977 to July 18, 1977
Do.....	Excessive rain.....	July 19, 1977 to October 21, 1977
Luce.....	Drought.....	May 1, 1977 to July 31, 1977
Mackinac.....	do.....	April 1, 1977 to July 31, 1977
Do.....	Excessive rain.....	August 1, 1977 to August 31, 1977

and adjacent counties within the State of Michigan as a result of natural disaster as indicated and the time for filing applications for physical damage until the close of business on September 29, 1978, and for economic injury until the close of business on December 29, 1978. Amendment No. 3 and No. 4 have the same termination dates.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Date: April 21, 1978.

A. VERNON WEAVER,
Administrator.

[FR Doc. 78-12057 Filed 5-2-78; 8:45]

[8025-01]

[Amendment No. 2; Declaration of Disaster Loan Area No. 1453]

NEBRASKA

Declaration of Disaster Loan Area

The above numbered declaration (see 43 FR 14368) and amendment No. 1 (see 43 FR 16584) are amended in accordance with the President's declaration of March 24, 1978, to include Knox and Pierce. The Small Business Administration will accept applications for disaster relief loans from disaster victims in the above-named counties and adjacent counties within the State. The termination date for filing applications for physical damage is extended to the close of business on June 12, 1978, and for economic injury the close of business on January 12, 1979.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: April 22, 1978.

A. VERNON WEAVER,
Administrator.

[FR Doc. 78-12058 Filed 5-2-78; 8:45 am]

[8025-01]

NEW COURT VENTURES, INC.

[Proposed License No. 02/02-0349]

Application for a License to Operate as a Small Business Investment Company

An application for a license to operate as a Small Business Investment Company under the Small Business Investment Act of 1958, as amended (Act) (15 U.S.C. 661 et seq.), has been filed by New Court Ventures, Inc. (the Applicant), with the Small Business Administration (SBA) pursuant to 13 CFR 107.102.

The applicant with its principal place of business at One Rockefeller Plaza, New York, 10020, will begin operations with \$500,000 of paid-in capital and surplus. The applicant will be the wholly owned subsidiary of New Court Private Equity Fund, Inc. (NCPEF), a closed-end investment company with 37 beneficial owners. The securities sold to NCPEF by the licensee will account for one percent of NCPEF's assets. NCPEF will also manage the applicant.

The officers and directors of the applicant will be as follows:

John P. Birkelund, Chairman of the Board, Director, 1020 Fifth Avenue, New York, N.Y. 10028.

Charles L. Lea, Jr., President, Director, 77 Park Avenue, Greenwich, Conn. 06830.

George F. Dinneen, Senior Vice President, Director, 20 Club Drive, Summit, N.J. 07901.

Francis X. Driscoll, Senior Vice President, Director, 8 Hansen Lane, Huntington Station, N.Y. 11746.

Charles T. Sager, Vice President, Director, 15 West 72d Street, Apartment No. 4C, New York, N.Y. 10020.

Albert S. Gluck, Secretary, Treasurer Director, 60 East End Avenue, New York, N.Y. 10028.

The above individuals have extensive experience in the venture capital field. They are also officers of NCPEF and New Court Securities, Inc. (NCS). The applicant will use office space furnished at no cost by NCS which will also serve as the applicant's investment advisor.

Officers of the applicant propose to become members of the board of directors of small concerns in which the applicant may invest. It will be the general policy of the applicant to work closely with its clients.

Matters involved in SBA's consideration of the applicant include the general business reputation and character of the proposed owners and manage-

ment, and the probability of successful operation of the applicant under their management, including adequate profitability and financial soundness, in accordance with the Act and the SBA rules and regulations.

The applicant will conduct its business primarily in New York City. The applicant intends to provide a source of equity (rather than collateral) oriented financing for small concerns. The early investments of the licensee will often be in convertible debt instruments which will provide current income while maintaining a potential equity interest.

Any person may, on or before (15 days from the date of this notice), submit to SBA written comments on the proposed Licensee. Any such communications should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in New York City.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: April 28, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator
for Investment.

[FR Doc. 78-12062 Filed 5-2-78; 8:45 am]

[8025-01]

[Declaration of Disaster Loan Area No. 1460]

NORTH DAKOTA

Declaration of Disaster Loan Area

As a result of the President's major disaster declaration, I find that Adams, Billings, Bowman, Burleigh, Cass, Dickey, Dunn, Emmons, Golden Valley, Grand Forks, Grant, Hettinger, La Moure, Logan, McIntosh, Mercer, Morton, Pembina, Richland, Sioux, Slope, Stark, Traill, and Walsh Counties constitute a disaster area because of damage resulting from severe storms, ice jams, snowmelt, and flooding beginning about March 11, 1978. The Small Business Administration will accept applications for disaster relief loans from disaster victims within the above-named counties and adjacent counties within the State of North Dakota. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on June 16, 1978, and for economic injury until the close of business on January 17, 1979, at:

Small Business Administration, District Office, Federal Office Building, Room 218, 653 Second Avenue North, Fargo, N. Dak. 58102.

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: April 22, 1978.

A. VERNON WEAVER,
Administrator.

[FR Doc. 78-12059 Filed 5-2-78; 8:45 am]

[8025-01]

[Declaration of Disaster Loan Area No. 1458]

RHODE ISLAND

Declaration of Disaster Loan Area

The area of 38, 42, 44, 46, and 48 High Street in the town of Westerly, Washington County, R.I., constitutes a disaster area because of damage resulting from a fire which occurred on March 26, 1978. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on June 22, 1978, and for economic injury until the close of business on January 22, 1979, at:

Small Business Administration, District Office, 57 Eddy Street, Providence, R.I. 02903.

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: April 22, 1978.

A. VERNON WEAVER,
Administrator.

[FR Doc. 78-12060 Filed 5-2-78; 8:45 am]

[4710-07]

DEPARTMENT OF STATE

[Public Notice CM-8/52]

SHIPPING COORDINATING COMMITTEE, SUB-COMMITTEE ON SAFETY OF LIFE AT SEA

Meeting

The working group on international multimodal transport and containers of the Subcommittee on Safety of Life at Sea, a subcommittee of the Shipping Coordinating Committee, will hold an open meeting from 9:30 a.m. to 5 p.m., on Wednesday, June 7, 1978, in room 9232 of the Department of Transportation, 400 Seventh Street SW., Washington, D.C. The meeting will be open to the public.

The purpose of the meeting is to discuss matters germane to multimodal transport and containers. The following specific issues will be addressed in the order indicated:

Discussion of preparations for June intersessional OECD meeting of the Intergovernmental Preparatory Group on International Multimodal Transport;

Discussion of regulations for the International Convention on Safe Containers (CSC);

Briefing on present U.S. status regarding TIR Convention, 1975, and Customs Convention on Containers, 1972;

Discussion of the following matters as addressed by the ECE, Group of Rapporteurs on Container Transport:

Proposed Convention on Container Standards International Multimodal Transport International Convention on Safe Containers (CSC);

Hamburg Conference (March 1978), on Maritime Bill of Lading;

Discussion of preparations for the 19th IMCO Subcommittee on Containers and Cargoes, July 24-28, London.

Necessary documents will be distributed as early as possible.

Any questions concerning this meeting should be directed to Mr. Richard E. Johe, Department of State, 202-632-1313.

Comments from the public will be welcomed.

Dated: April 25, 1978.

RICHARD K. BANK,
Chairman, Shipping
Coordinating Committee.

[FR Doc. 78-11940 Filed 5-2-78; 8:45 am]

[4830-01]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

PUBLIC INSPECTION OF WRITTEN DETERMINATIONS

Intention to Disclose

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of intention to disclose.

SUMMARY: This document provides notice that the Service intends to make open to public inspection certain written determinations. This notice also explains how any person may determine whether any of the described written determinations pertain to that person, and explains the procedures that person may follow if there is disagreement regarding the proposed deletions.

DATES: Persons wanting to find out whether their particular written determinations are among those to be made open to public inspection pursuant to this notice are requested to contact the Service by May 18, 1978.

Requests for additional deletions must be submitted by June 7, 1978. A petition in the United States Tax Court must be filed by July 18, 1978. Except for the disputed portion of any document that is the subject of an action brought in the United States Tax Court, the written determinations described in this notice will be made open to public inspection on August 28, 1978.

ADDRESS: Any questions or correspondence regarding this notice

should be sent to: Internal Revenue Service, Attention: T:FP:R, Ben Franklin Station, P.O. Box 7604, Washington, D.C. 20044.

FOR FURTHER INFORMATION CONTACT:

George E. Freeland of the Rulings Disclosure Branch, Tax Forms and Publications Division, Office of the Assistant Commissioner, Technical, 202-566-4378 or 202-566-6272.

SUPPLEMENTARY INFORMATION:

Section 6110(h) of the Internal Revenue Code of 1954 provides that certain written determinations (letter rulings and technical advice memoranda) issued in response to requests submitted before November 1, 1976, shall be open to public inspection. Accordingly, the Service is preparing to open to public inspection the written determinations issued after December 31, 1953, but before January 1, 1968, classified as reference and that originated in the Individual Tax Division, Office of the Assistant Commissioner (Technical), or predecessor divisions, and that involve issues falling within the jurisdiction of that Division. A written determination classified as reference is one the Commissioner has determined to have significant reference value.

Issues falling within the jurisdiction of the Individual Tax Division are those involving:

- (a) Income taxes of noncorporate taxpayers (including individuals, partnerships, estates and trusts);
- (b) Political organizations under section 527 of the Internal Revenue Code (except section 527(f));
- (c) Employment taxes and taxes on self-employment income;
- (d) Estate, gift, and certain excise taxes;
- (e) Procedure and administrative provisions of the Internal Revenue Code, except those specifically applicable to employee plans, exempt organizations, and actuarial determinations.

The Division also has jurisdiction over issues involving both noncorporate and corporate taxpayers with respect to:

- (f) Charitable contributions; tenant-stockholders of cooperative housing corporations;
- (g) Employee stock option and stock purchase plans;
- (h) Real estate investment trusts;
- (i) Election of certain small business corporations as to tax status and related matters, except the rules relating to certain qualified pension plans. The Division does not have jurisdiction over issues involving excise taxes under Chapters 42 and 43 of the Internal Revenue Code, nor did it issue written determinations prior to October 1, 1973, involving Interest Equalization Tax.

The Division is composed of three Branches: Individual Income Tax Branch (T:II); Estate and Gift Tax Branch (T:IEG); and Wage, Excise and Administrative Provisions Branch (T:IEWA). All reference written determinations issued during the pre-

scribed time periods discussed in this notice and originating in these branches or predecessor branches are intended to be within the scope of this notice.

DELETIONS

Section 6110(c) of the Code requires the Internal Revenue Service to delete certain information from the documents described in this notice. The Service intends to delete names, addresses, and taxpayer identifying numbers, and will also attempt to recognize and delete other identifying details, trade secrets, and the other information described in section 6110(c), before making the written determination open to public inspection.

Persons to whom the written determinations described in this notice pertain (or successors in interest, executors, or authorized representatives of these persons) may contact the Internal Revenue Service to find out whether their particular written determinations are among those to be made open to public inspection pursuant to this notice. These persons may request a copy of their written determinations with the proposed deletions indicated. Such requests should be submitted by May 18, 1978. Such requests must indicate the specific name of the party to which the written determination pertains, for example, a corporation acting on behalf of one or more subsidiaries must indicate the name of such subsidiary or subsidiaries. If such a person disagrees with the proposed deletions, that person may indicate any additional information that person believes should be deleted. Any request for additional deletions must be submitted by June 7, 1978, and must include a statement indicating which of the exemptions provided in section 6110(c) of the Code is applicable to each additional deletion requested. If the Service feels it cannot make any or all of the additional deletions requested, the Service will so advise the requester. The requester will then have the right to file a petition in the United States Tax Court. This petition must be filed by July 18, 1978.

ADDITIONAL DISCLOSURE

After the deleted copy of a written determination is made open to public inspection in the National Office Reading Room, any person may request the Service to make additional portions of the written determination open to public inspection. If the Service receives a request that involves disclosure of names, addresses, or taxpayer identifying numbers, the Service will deny the request. If the request involves disclosure of anything other than names, addresses, or taxpayer identifying numbers, the Service will contact the person to whom the written determination pertains before further action is taken.

BACKGROUND FILE DOCUMENTS

After the deleted copy of a written determination is made open to public inspection, any person may request copies of related background file documents. Notice will be provided to the person to whom the written determination pertains if a request for related background file documents is received. The notice and any other notice or correspondence relating to public inspection of written determinations will be mailed to the latest address in the Service's written determination file, unless a later address is provided to the Service in connection with these matters.

The written determinations described in this notice will be made open to public inspection by being placed in the National Office Reading Room, Room 1564, Internal Revenue Service Building, 1111 Constitution Avenue NW., Washington, D.C., on August 28, 1978. However, the disputed portion of any document that is the subject of any action brought in the United States Tax Court shall not be made available until after a court determination regarding such portion is made.

JEROME KURTZ,
*Commissioner of
Internal Revenue.*

[FR Doc. 78-11975 Filed 5-2-78; 8:45 am]

[4830-01]

[Delegation Order No. 156, Amdt. 6]

REGIONAL COMMISSIONERS, ET AL.

Delegation of Authority

AGENCY: Internal Revenue Service.

ACTION: Delegation of Authority.

SUMMARY: This Amendment permits Regional Commissioners, District Directors and Assistant to the Commissioner (Public Affairs) to disclose certain taxpayer identity information to the press and other media for purposes of notifying persons entitled to undelivered tax refunds. The text of this Amendment appears below.

EFFECTIVE DATE: April 26, 1978.

FOR FURTHER INFORMATION CONTACT:

Howard T. Martin, CPD, 1111 Constitution Avenue NW., Room 1603, Washington, D.C. 20224, Telephone Number, 202-566-3908, not a toll-free telephone number.

HOWARD T. MARTIN,
*Director, Disclosure
Operations Division.*

DISCLOSURE OF IDENTITY INFORMATION OF TAXPAYERS ENTITLED TO UNDELIVERED TAX REFUNDS

The authority vested in the Commissioner of Internal Revenue by IRC 6103 (m)(1) and

Treasury Department Order No. 150-37 to disclose taxpayers' names and the city, state and zip code of their mailing addresses to the press and other media for purposes of notifying persons entitled to undelivered tax refunds, is delegate to all Regional Commissioners, District Directors, and the Assistant to the Commissioner (Public Affairs).

This authority may not be redelegated.

This Order supplements paragraph 9 of Delegation Order No. 156, issued May 19, 1976, which is printed in the FEDERAL REGISTER dated May 21, 1976, Vol. 41, Number 100, page 20898.

JEROME KURTZ,
Commissioner.

APRIL 19, 1978.

[FR Doc. 78-11976 Filed 5-2-78; 8:45 am]

[4810-22]

DEPARTMENT OF THE TREASURY

Office of the Secretary

STEEL WIRE ROPE FROM THE REPUBLIC OF KOREA

Antidumping Extension of Investigatory Period

AGENCY: United States Treasury Department.

ACTION: Extension of Antidumping Investigatory Period.

SUMMARY: This notice is to advise the public that the Secretary of the Treasury has determined that a tentative determination as to whether sales at less than fair value of steel wire rope from the Republic of Korea have occurred cannot reasonably be made in 6 months. This decision will be made in not longer than 7 months from the date of the initiation of the investigation.

Sales at less than fair value generally occur when the price of merchandise sold for exportation to the United States is less than the price of such or similar merchandise sold in the home market or to third countries.

EFFECTIVE DATE: May 3, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Leon McNeill, U.S. Customs Service, Office of Operations, Duty Assessment Division, Technical Branch, 1301 Constitution Avenue NW., Washington, D.C., 202-566-5492.

SUPPLEMENTARY INFORMATION: On September 27, 1977, information was received in proper form pursuant to §§ 153.26 and 153.27, Customs Regulations (19 CFR 153.26 and 153.27) from counsel acting on behalf of Broderick and Bascom Rope Company of St. Louis, Missouri alleging that steel wire rope is, or is likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 *et seq.*) (hereinafter referred to as "the Act"). On the basis of this information, an "Anti-

dumping Proceeding Notice" was published in the FEDERAL REGISTER of November 1, 1977 (42 FR 57202).

For purposes of this notice, the term "steel wire rope" means ropes, cables, and cordage other than wire strand, of steel, other than brass plated, not fitted with fittings, not made up into articles and not covered with textiles or other nonmetallic materials.

Pursuant to section 201(b)(2) of the Act (19 U.S.C. 160(b)(2)), notice is hereby given that the Secretary concludes that the determination provided for in section 201(b)(1) of the Act (19 U.S.C. 160(b)(1)) cannot reasonably be made within 6 months. The determination under section 201(b)(1) of the Act (19 U.S.C. 160(b)(1)) will, therefore, be made within no more than 7 months.

A one-month extension of the investigatory period is required in this case in view of the volume and complexity of the information submitted by the respondents relating to numerous varying sizes and specifications of the subject merchandise, and the additional time needed to analyze and verify such information before a tentative determination can be made.

This notice is published pursuant to section 201(b)(2) of the Act (19 U.S.C. 160(b)(2)).

ROBERT H. MUNDHEIM,
*General Counsel
of the Treasury.*

APRIL 28, 1978.

[FR Doc. 78-12185 Filed 5-2-78; 8:45 am]

[8320-01]

VETERANS ADMINISTRATION

CAREER DEVELOPMENT COMMITTEE

Reestablishment

Notice is hereby given of a determination by the Administrator of Veterans Affairs to reestablish the Career Development Committee which terminated on December 31, 1977. This determination follows consultation with the Committee Management Secretariat, pursuant to the Federal Advisory Committee Act (Pub. L. 92-463) and OMB Circular No. A-63, Revised, March 27, 1974. The Career Development Program has operated to the benefit of the Veterans Administration by recruiting and retaining in its system many good physicians, clinical psychologists, and dentists. It is a major attracting device for talented young physicians. Over the years the Career Development Committee has provided very astute advice concerning the types of candidates that we should support in these positions. The Veterans Administration retains 46 percent of the graduates of this program, which is remarkably high for such a program. We believe that we cannot

operate such a program without the independent judgment and advice of the Committee, which is contributory to the high quality of the system and to the respect and prestige that the program holds within the academic medical community.

Interested persons may submit comments regarding the reestablishment of the Career Development Committee to the Committee Management Officer, Veterans Administration Central Office, Room 1001, 810 Vermont Avenue NW., Washington, D.C. 20420.

Dated: April 27, 1978.

MAX CLELAND,
Administrator.

[FR Doc. 78-12023 Filed 5-2-78; 8:45 am]

[8320-01]

CENTRAL OFFICE EDUCATION AND TRAINING REVIEW PANEL

Meeting

The Veterans Administration gives notice pursuant to Pub. L. 92-463 that a meeting of the Central Office Education and Training Review Panel, authorized by Section 1790(b), Title 38, United States Code, will be held in Room A-53, Veterans Administration Central Office, 810 Vermont Avenue NW., Washington, D.C. on May 24, 1978 at 10 a.m. The meeting will be held for the purpose of reviewing the decision of the Director, Veterans Administration Regional Office, Baltimore, Md., that education allowances to all veterans and eligible persons enrolled in Maryland School for Education, Business and Vocational Skills, located at 5420 Harford Road, Baltimore, Md. 21214 and 212 South Ritchie Highway, Glen Burnie, Md. 21011 be discontinued effective December 31, 1977.

The meeting will be open to the public up to the seating capacity of the conference room. Because of the limited seating capacity, it will be necessary for those wishing to attend to contact Mr. Bernard D. Duber, Chief Field Operations Education and Rehabilitation Service, Veterans Administration Central Office (phone 202 389-2850) prior to May 15, 1978.

Dated: April 27, 1978.

By direction of the Administrator.

RUFUS H. WILSON,
Deputy Administrator.

[FR Doc. 78-12022 Filed 5-2-78; 8:45 am]

[7035-01]

INTERSTATE COMMERCE COMMISSION

[Notice No. 650]

ASSIGNMENT OF HEARINGS

APRIL 28, 1978.

Cases assigned for hearing, postponement, cancellation, or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested:

MC 114211 (Sub-No. 317), Warren Transport, Inc., now being assigned May 31, 1978, (3 days), at Denver, CO, in a hearing room to be later designated.

MC 105006 (Sub-No. 5), L. K. Smith Trucking, a corporation, now being assigned June 5, 1978 (5 days), at Denver, CO, in a hearing room to be later designated.

MC 128270 (Sub-No. 24), Rediehs Interstate Inc., now being assigned June 12, 1978 (3 days), at Denver, CO., in a hearing room to be later designated.

MC 115651 (Sub-No. 30), Kaney Transportation, Inc., now assigned May 11, 1978, at Chicago, IL, is canceled and application dismissed.

MC 41404 (Sub-No. 130), Argo-Collier Truck Lines, Corp., now assigned May 15, 1978, at Chicago, IL, is postponed indefinitely.

MC 113855 (Sub-No. 413), now assigned May 8, 1978, at Chicago, IL, will be held in Room 572, Everett McKinley Dirksen Building, 219 South Dearborn Street.

MC 143059 (Sub-No. 4), Mercer Transportation Co., and MC 141804 (Sub-No. 95), Western Express, Division of Interstate Rental, Inc., are now assigned for hearing May 31, 1978 (1 day), at San Francisco, CA, at a location to be later designated.

MC 141871 (Sub-No. 5), WNI, Inc., is now assigned for hearing June 1, 1978 (2 days), at San Francisco, CA, at a location to be later designated.

MC 134768 (Sub-No. 2), Lexington-Paris Motor Freight, Inc., and MC 121649 (Sub-No. 4), Milan Express, Inc., are now assigned for continued hearing July 25, 1978 (2 days), at the Executive Plaza Inn, 1471 East Brooks Road at Interstate-55 in Memphis, TN.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-12050 Filed 5-2-78; 8:45 am]

[7035-01]

[Notice No. 651]

ASSIGNMENT OF HEARINGS

APRIL 28, 1978.

Cases assigned for hearing, postponement, cancellation, or oral argu-

ment appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

CORRECTION

FD-28697, for which hearing dates and locations were published in the FEDERAL REGISTER on April 11 on page 15212 and April 26, 1978, on page 17902, showed the case title incorrectly. The correct case title is: Southern Railway Co. Discontinuance of Trains Nos. 1 and 2 between Washington, DC, and New Orleans, LA. Also, in the publication of April 26, 1978, the May 19, 1978, hearing location is incorrectly shown as Charlottesville, WV. Charlottesville, VA, is correct.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-12049 Filed 5-2-78; 8:45 am]

[7035-01]

FOURTH SECTION APPLICATION FOR RELIEF

APRIL 28, 1978.

This application for long-and-short-haul relief has been filed with the ICC.

Protests are due at the ICC within 15 days from the date of publication of this notice.

FSA No. 43536, Southwestern Freight Bureau, Agent's No. B-741, annual volume rates on styrene butadiene emulsion and diethylbenzene, from Freeport, Tex., to Midland, Mich., in sup. 34 to its tariff 12-K, ICC 5272, to become effective May 27, 1978. Grounds for relief—rate relationship and kindred articles.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-12048 Filed 5-2-78; 8:45 am]

[7035-01]

IRREGULAR-ROUTE MOTOR COMMON CARRIERS OF PROPERTY—ELIMINATION OF GATEWAY LETTER NOTICES

APRIL 21, 1978.

The following letter-notices of proposals to eliminate gateways for the purpose of reducing highway congestion, alleviating air and noise pollution, minimizing safety hazards, and conserving fuel have been filed with the Interstate Commerce Commission under the Commission's Gateway Elimination Rule (49 CFR 1065), and

notice thereof to all interested persons is hereby given as provided in such rules.

An original and two copies of protests against the proposed elimination of any gateway herein described may be filed with the Interstate Commerce Commission on or before May 15, 1978. A copy must also be served upon applicant or its representative. Protests against the elimination of a gateway will not operate to stay commencement of the proposed operation.

Successively filed letter-notices of the same carrier under these rules will be numbered consecutively for convenience in identification. Protests, if any, must refer to such letter-notices by number.

The following applicants seek to operate as a common carrier, by motor vehicles, over irregular routes.

No. MC 40215 (Sub-No. E11) (Correction), filed May 17, 1974, published in the FEDERAL REGISTER issue of November 3, 1976, and partially republished, as corrected, this issue. Applicant: RICHARDSON TRANSFER & STORAGE CO., INC., 246 North 5th Avenue, Salina, KS 67401. Applicant's representative: James F. Flint, Ephraim and Polydoroff, Suite 600, 1250 Connecticut Avenue NW., Washington, DC 20036. *Household goods*, as defined by the Commission, (1)(a) From points in IA to points in CA. (Garden City, KS*). (F)(1) From points in IA to points in NM. (Garden City, KS*). (F)(2) From points in IA to points in NV. (Garden City, KS*). (G) From points in IA to points in OK. (Wichita, KS*). (H) From points in IA to points in TX. (points in KS and Kansas City, MO*). The purpose of this filing is to eliminate the gateways indicated by asterisks above.

NOTE.—The purpose of this partial republication is to correct the origin destinations. The remainder of this letter-notice remains as previously published.

No. MC 40215 (Sub-No. E35), filed May 17, 1974. Applicant: RICHARDSON TRANSFER & STORAGE CO., INC., 246 North 5th Avenue, Salina, KS 67401. Applicant's representative: James Flint, suite 600, 1250 Connecticut Avenue NW., Washington, DC 20036. *Household goods*, as defined by the Commission, (1) From points in NM to points in AR on and north of a line beginning at the OK-AR State line at Siloam Springs, AR, and extending along AR Hwy 16 to junction AR Hwy 23 near St. Paul, then southeast along AR Hwy 23 to junction Interstate Hwy 40, then along Interstate Hwy 40 to the AR-TN State line. (Galena, or Arkansas City, AR*). (2) From points in NM to those points in KS on and north of a line beginning at the KS-MO State line, and extending along U.S. Hwy 24 to Topeka, KS, then along KS Hwy 4 to Eskridge, KS,

then along KS Hwy 99 to Emporia, KS, then along U.S. Hwy 50 (formerly U.S. Hwy 50S) to Garden City, KS, and then along U.S. Hwy 50 to junction KS-CO State line. (points in KS*). (3) From those points NM on and north of a line beginning at the NM-CO State line near Raton, and extending along Interstate Hwy 25 to junction Interstate Hwy 40 near Albuquerque, then west along Interstate Hwy 40 to the CO-AZ State line, to those points in OK on and west of a line beginning at the KS-OK State line, and extending south on U.S. Hwy 54 to the OK-TX State line. (Liberal, KS*). The purpose of this filing is to eliminate the gateways as indicated by asterisks above.

No. MC 40215 (Sub-No. E36), filed May 17, 1974. Applicant: RICHARDSON TRANSFER & STORAGE CO., INC., 246 North Fifth Avenue, Salina, KS 67401. Applicant's representative: James E. Flint, Suite 600, 1250 Connecticut Avenue NW., Washington, DC 20036. *Household goods*, as defined by the Commission, (1)(A) From those points in IA on and north and east of a line beginning at the IA-IL State line near Fort Madison, IA, and extending west along IA Hwy 2 to junction Interstate Hwy 35, then north along Interstate Hwy 35 to junction U.S. Hwy 20 at Williams, IA, then west along U.S. Hwy 20 to the IA-NE State line at Sioux City, IA, to points in ID on and south and west of a line beginning at the ID-OR State line at Payetta, ID, and extending east along Interstate Hwy 80 to junction ID Hwy 51 near Mountain Home, then south on ID Hwy 51 to the ID-NV State line. (B) From those points in IA on and south and east of a line beginning at the IA-MO State line, and extending along IA Hwy 5, then along IA Hwy 5 to junction IA Hwy 2 at Centerville, IA, then east along IA Hwy 2 to the IA-IL State line near Fort Madison, IA, to points in ID. (Garden City, KS*). (2) From those points in IA north and east of a line beginning at the IA-NE State line, and extending along Interstate Hwy 80 near Loveland, then east along Interstate Hwy 80 to the junction of U.S. Hwy 65 at Des Moines, then south along U.S. Hwy 65 to IA-MO State line near Lineville, to points in KS beginning at the KS-NE State line, and extending along U.S. Hwy 77, then south on U.S. Hwy 77 to junction U.S. Hwy 24, then along U.S. Hwy 24 to Manhattan, KS, then along U.S. Hwy 18 (formerly U.S. Hwy 40) to Junction City, KS, then along U.S. Hwy 77 to junction U.S. Hwy 56 (formerly U.S. Hwy 40) to Larned, KS, then west along U.S. Hwy 156 (formerly U.S. Hwy 50N) to Garden City, KS, then east on U.S. Hwy 50 to Emporia, then north along KS Hwy 99 to junction KS Hwy 4 at Eskridge, then along KS Hwy 4 to U.S. Hwy 24 at Topeka,

then east along U.S. Hwy 24 to the KS-MO State line. (Hutchison, KS, or Kansas City, MO*). (3) From points in IA on and east and south of a line beginning at the IA-MO State line, and extending along U.S. Hwy 63 to junction U.S. Hwy 30, to junction IA Hwy 64, then along IA Hwy 64 to the IA-IL State line, to points in UT. (Garden City, KS*). (4) From Payne, IA, to points in MD. (Marysville, KS, Kansas City, MO, and Akron, OH*). The purpose of this filing is to eliminate the gateways as indicated by asterisks above.

No. MC 40215 (Sub-No. E37), filed May 17, 1974. Applicant: RICHARDSON TRANSFER & STORAGE CO., INC., 246 North 5th Street, Salina, KS 67401. Applicant's representative: Theodore Polydoroff, Suite 600, 1250 Connecticut Avenue NW., Washington, DC 20036. *Household goods*, as defined by the Commission, (1)(A) From points in MI to those points in WY on and south of a line beginning at the WY-NE State line, and extending along Interstate Hwy 80, then along Interstate Hwy 80 to the WY-ID State line. (B) From Detroit, MI, to those points in WY on and south and west of a line beginning at the WY-NE State line, and extending along Interstate Hwy 80 to junction U.S. Hwy 287, then along U.S. Hwy 287 to junction WY Hwy 789, then along WY Hwy 789 to junction WY Hwy 120, then along WY Hwy 120 to the WY-MT State line. (Garden City, KS*). (2) From points in MI to those points in KS on and east of a line beginning at the KS-NE State line, and extending along U.S. Hwy 77 to junction U.S. Hwy 24, then along U.S. Hwy 24 to junction KS Hwy 18, then along KS Hwy 18 to junction U.S. Hwy 77, then along U.S. Hwy 77 to junction U.S. Hwy 56, then along U.S. Hwy 56 to junction U.S. Hwy 156 at Garden City, KS, then along U.S. Hwy 156 to junction U.S. Hwy 50, then east along U.S. Hwy 50 to Emporia, KS, at KS Hwy 99, then north along KS Hwy 99 to junction KS Hwy 4, then along KS Hwy 4 to junction U.S. Hwy 24, then along U.S. Hwy 24 to the KS-MO State line. (Eldorado, KS, or Kansas City, MO*). The purpose of this filing is to eliminate the gateways as indicated by asterisks above.

No. MC 55898 (Sub-No. E5), filed December 9, 1975. Applicant: DECATO BROS., INC., Heater Road, Lebanon, NH 03766. Applicant's representative: David M. Marshall, 135 State Street, Suite 200, Springfield, MA 01103. *Lumber*, from points in Grafton, Coos, Carroll, Belknap, and Strafford Counties, NH, to points in WI, MI, IN, IL, and KY. The purpose of this filing is to eliminate the gateway of points in VT.

No. MC 55898 (Sub-No. E6), filed December 9, 1975. Applicant: DECATO

BROS., INC., Heater Road, Lebanon, NH 03766. Applicant's representative: David M. Marshall, 135 State Street, Suite 200, Springfield, MA 01103. *Lumber*, from points in VT to points in RI. The purpose of this filing is to eliminate the gateway of Merrimack, Cheshire, Hillsboro, Sullivan, and Grafton Counties, NH.

No. MC 55898 (Sub-No. E10), filed December 9, 1975. Applicant: DECATO BROS., INC., Heater Road, Lebanon, NH 03766. Applicant's representative: David M. Marshall, 135 State Street, Suite 200, Springfield, MA 01103. *Lumber*, from points in ME to points in MA, CT, and RI. The purpose of this filing is to eliminate the gateway of Rollinsford, NH, and York and Cumberland Counties, ME.

No. MC 55898 (Sub-No. E12), filed December 9, 1975. Applicant: DECATO BROS., INC., Heater Road, Lebanon, NH 03766. Applicant's representative: David M. Marshall, 135 State Street, Suite 200, Springfield, MA 01103. *Lumber*, from points in ME to Trenton, NJ, and points in that part of NJ on and north of a line extending eastward along NJ Hwy. 33 from Trenton through Robbinsville, Hightstown, Jerseyville, and Hamilton, NJ, to Ocean Grove, NJ. The purpose of this filing is to eliminate the gateways of Rollinsford, NH, and points in VT.

No. MC 55898 (Sub-No. E15), filed December 9, 1975. Applicant: DECATO BROS., INC., Heater Road, Lebanon, NH 03766. Applicant's representative: David M. Marshall, 135 State Street, Suite 200, Springfield, MA 01103. *Lumber*, from points in MA to points in ME. The purpose of this filing is to eliminate the gateways of Merrimack, Cheshire, Hillsboro, and Sullivan Counties, NH.

No. MC 61825 (Sub-No. E1247), filed May 13, 1974. Applicant: ROY STONE TRANSFER CORP., P.O. Box 385, Collinsville, VA 24078. Applicant's representative: Harry J. Jordan, 1000 Sixteenth Street NW, Washington, DC 20036. *New furniture*, from points in FL on and west of a line beginning at the AL-FL State line, and extending south along U.S. Hwy 231 to junction U.S. Hwy 90, to junction FL Hwy 71, junction FL Hwy 20, to junction FL Hwy 12, to junction FL Hwy 65 to Green Point, FL, and then to the Gulf of Mexico, and points on and south of a line beginning at Coldwater, FL, and extending east along FL Hwy 60 to junction U.S. Hwy 27, to junction U.S. Hwy 98, to junction FL Hwy 70, to junction FL Hwy 710 to Riviera Beach, FL, and then to the Atlantic Ocean, to points in CT, MA and RI and points in ME, NH, and VT on and south of a line beginning at Burlington, VT, and extending east along VT Hwy 15 to junction U.S. Hwy 2, to junction VT

Hwy 18, to junction NH Hwy 18, to junction U.S. Hwy 302 to Portland, ME, and then to the Atlantic Ocean. The purpose of this filing is to eliminate the gateways of Pulaski, VA, Martinsville, VA, and Elizabeth City, NC.

No. MC 107002 (Sub-No. E339), filed May 12, 1974. Applicant: MILLER TRANSPORTERS, INC., P.O. Box 1123, Jackson, MS 39205. Applicant's representatives: Harold D. Miller, Jr., P.O. Box 22567, Jackson, MS 39205, and John J. Borth, P.O. Box 8573, Battlefield Station, Jackson, MS 39204. *Petroleum products*, in bulk, in tank vehicles, from Cordova, AL, to points in MO. The purpose of this filing is to eliminate the gateway of Memphis, TN.

No. MC 96324 (Sub-No. E1), filed February 9, 1976. Applicant: GENERAL DELIVERY INC., P.O. Box 1816, Fairmont, WV. Applicant's representative: Harold G. Hernly, Jr., Esq., 118 North Saint Asaph Street, Alexandria, VA 22314. *Containers and closures therefor*, from points in WV, to points in ME, NH, CT, RI, MA, and VT, with no transportation for compensation on return except as otherwise authorized. The purpose of this filing is to eliminate the gateway of points in WV within the commercial zone of Cumberland, MD.

No. MC 96324 (Sub-No. E4), filed February 9, 1976. Applicant: GENERAL DELIVERY INC., P.O. Box 1816, Fairmont, WV. Applicant's representative: Harold G. Hernly, Jr., Esq., 118 North Saint Asaph Street, Alexandria, VA 22314. *Glass containers and pottery containers*, from points in Allegheny, Westmoreland, Washington, Fayette, Greene, and Beaver Counties, PA, to points in VT, MA, CT, RI, NH, and ME. Restriction: Restricted against service from Beaver and Allegheny Counties, PA, to VT. The purpose of this filing is to eliminate the gateway of Harrison County, WV, and points in WV.

No. MC 96324 (Sub-No. E5), filed February 9, 1976. Applicant: GENERAL DELIVERY INC., P.O. Box 1816, Fairmont, WV. Applicant's representative: Harold G. Hernly, Jr., Esq., 118 North Saint Asaph Street, Alexandria, VA 22314. *Glass containers and pottery containers*, from Chattanooga, TN, to points in DE. The purpose of this filing is to eliminate the gateways of Clarksburg, WV and Winchester, VA.

No. MC 96324 (Sub-No. E6), filed February 9, 1976. Applicant: GENERAL DELIVERY INC., P.O. Box 1816, Fairmont, WV. Applicant's representative: Harold G. Hernly, Jr., Esq., 118 North Saint Asaph Street, Alexandria, VA 22314. *Glass containers and containers used in building and highway*

construction, from points in KY to points in DE, MD, and the District of Columbia, with no transportation for compensation on return except as otherwise authorized. The purpose of this filing is to eliminate the gateways of Harrison County, WV and Short Gap, WV.

No. MC 96324 (Sub-No. E10), filed February 9, 1976. Applicant: GENERAL DELIVERY INC., P.O. Box 1816, Fairmont, WV. Applicant's representative: Harold G. Hernly, Jr., Esq., 118 North Saint Asaph Street, Alexandria, VA 22314. *Glass containers and containers used in the manufacture and shipping thereof*, from Chattanooga, TN, to points in CT, ME, MA, NH, RI, and VT. The purpose of this filing is to eliminate the gateway of Fairmont, WV.

No. MC 96324 (Sub-No. E11), filed February 9, 1976. Applicant: GENERAL DELIVERY INC., P.O. Box 1816, Fairmont, WV. Applicant's representative: Harold G. Hernly, Jr., Esq., 118 North Saint Asaph Street, Alexandria, VA 22314. *Glass containers, fibreboard boxes, and wooden bottle carriers*, from Chattanooga, TN, to points in NY, NJ, MD (except Baltimore), and PA. The purpose of this filing is to eliminate the gateway of Fairmont, WV.

No. MC 96324 (Sub-No. E13), filed February 9, 1976. Applicant: GENERAL DELIVERY INC., P.O. Box 1816, Fairmont, WV. Applicant's representative: Harold G. Hernly, Jr., Esq., 118 North Saint Asaph Street, Alexandria, VA 22314. *Containers and closures therefor*, from points in Fayette and Greene Counties, PA, to points in NC. The purpose of this filing is to eliminate the gateways of Morgantown and Short Gap, WV.

No. MC 96324 (Sub-No. E14), filed February 9, 1976. Applicant: GENERAL DELIVERY INC., P.O. Box 1816, Fairmont, WV. Applicant's representative: Harold G. Hernly, Jr., Esq., 118 North Saint Asaph Street, Alexandria, VA 22314. *Glass containers and pottery containers*, from Chattanooga, TN, to Baltimore MD. The purpose of this filing is to eliminate the gateway of Clarksburg, WV.

No. MC 96324 (Sub-No. E17), filed February 9, 1976. Applicant: GENERAL DELIVERY INC., P.O. Box 1816, Fairmont, WV. Applicant's representative: Harold G. Hernly, Jr., Esq., 118 North Saint Asaph Street, Alexandria, VA 22314. *Glass containers and closures therefor and fibreboard boxes*, from Winchester, VA, Cumberland, MD, and Short Gap and Martinsburg, WV, to Terre Haute, IN, and Pekin and Joliet, IL. The purpose of this filing is to eliminate the gateway of Star City, WV.

No. MC 96324 (Sub-No. E20), filed February 9, 1976. Applicant: GENERAL

AL DELIVERY INC., P.O. Box 1816, Fairmont, WV. Applicant's representative: Harold G. Hernly, Jr., Esq., 118 North Saint Asaph Street, Alexandria, VA 22314. *Glass containers and closures therefor, fibreboard boxes, and wooden carriers*, from Chattanooga, TN, to points in that portion of PA east of U.S. Hwy 219 and west of a line beginning at the MD-PA State line, and extending north along U.S. Hwy 11 to Montgomerys Ferry, PA, then along U.S. Hwy 209 to the PA-NY State line, and to points in that portion of NY on and east of a line beginning at the PA-NY State line, and extending north along U.S. Hwy 16 to junction NY Hwy 78, and then along NY Hwy 78 to Lake Ontario, and west of a line beginning at the PA-NY State line, and extending north along U.S. Hwy 209 to Kingston, NY, then along an unnumbered highway to junction NY Hwy 199, and then along NY Hwy 199 to the NY-CT State line. The purpose of this filing is to eliminate the gateway of Charleston, WV.

No. MC 96324 (Sub-No. E21), filed February 9, 1976. Applicant: GENERAL DELIVERY INC., P.O. Box 1816, Fairmont, WV. Applicant's representative: Harold G. Hernly, Jr., Esq., 118 North St. Asaph Street, Alexandria, VA 22314. *Glass containers and closures therefor and fibreboard boxes*, from Chattanooga, TN, to Dunkirk and Fredonia, NY. The purpose of this filing is to eliminate the gateway of Star City, WV.

No. MC 96327 (Sub-No. E22), filed February 9, 1976. Applicant: GENERAL DELIVERY INC., P.O. Box 1816, Fairmont, WV. Applicant's representative: Harold G. Hernly, Jr., Esq., 118 North St. Asaph Street, Alexandria, VA 22314. *Glass containers and pottery containers*, (1) from points in and west of Carroll, Pulaski, and Giles Counties, VA, to points in Mineral, Hampshire, Morgan, Berkeley, and Jefferson Counties, WV, points in NY, NJ, CT, RI, MA, VT, and NH. (2) from points in Craig, Floyd, Roanoke, Botetourt, Montgomery, and Bedford Counties, VA, to points in Mineral, Hampshire, Berkeley, and Jefferson and Morgan Counties, WV and points in Erie, Crawford, and Warren Counties, PA. (3) from points in Franklin, Henry, Pittsylvania, and Patrick Counties, VA, to Mineral, Hampshire, Berkeley, Morgan, and Jefferson Counties, WV. The purpose of this filing is to eliminate the gateways of Harrison County, WV, and points in WV within the commercial zone of Cumberland, MD.

No. MC 96324 (Sub-No. E24), filed February 9, 1976. Applicant: GENERAL DELIVERY INC., P.O. Box 1816, Fairmont, WV. Applicant's representa-

tive: Harold G. Hernly, Jr., Esq., 118 North St. Asaph Street, Alexandria, VA 22314. *Containers and closures for containers*, from Jefferson, Berkeley, Morgan, Hampshire, Mineral, Grant, and Hardy Counties, WV, to points in NC east of Surry, Wilkes, Alexander, Catawba, Lincoln, and Cleveland Counties. The purpose of this filing is to eliminate the gateway of Short Gap, WV or Martinsburg, WV or points in WV within the commercial zone of Cumberland, MD.

No. MC 96324 (Sub-No. E27), filed February 9, 1976. Applicant: GENERAL DELIVERY INC., P.O. Box 1816, Fairmont, WV. Applicant's representative: Harold G. Hernly, Jr., Esq., 118 North St. Asaph Street, Alexandria, VA 22314. *Containers and closures for containers*, from points in Marshall, Ohio, Brooke, and Hancock Counties, WV, to points in NC east of Alleghany, Wilkes, Alexander, Catawba, and Cleveland Counties, NC. The purpose of this filing is to eliminate the Gateway of points in WV within the commercial zone of Cumberland, MD.

No. MC 141364 (Sub-No. E1) (partial correction), filed December 24, 1975, published in the FEDERAL REGISTER issue of March 9, 1978, and partially republished, as corrected, this issue. Applicant: AFFILIATED VAN LINES, INC., 2124 Washington Street, Lawton, OK 73501. Applicant's representative: Charles J. Kimball, 350 Capital Life Center, 1600 Sherman Street, Denver, CO 80203. *Household goods*, as defined by the Commission, * * * (4) between those points in KS beginning at the KS-OK State line, then along the western boundaries of Sumner and Sedgwick Counties, KS, the northern boundary of Sedgwick County, KS, and the eastern boundary of Sedgwick County, KS, to junction U.S. Hwy 54, then along U.S. Hwy 54 to junction U.S. Hwy 77, then along U.S. Hwy 77 to the OK-KS State line, on the one hand, and, on the other, * * * The purpose of this filing is to eliminate the gateway of points in OK on and east of U.S. Hwy 77.

NOTE.—The purpose of this partial correction is to state the correct origin territory. The remainder of this letter-notice remains as previously published.

No. MC 108341 (Sub-No. E15), filed November 9, 1977. Applicant: MOSS TRUCKING CO., INC., 3027 North Tryon Street, P.O. Box 8409, Charlotte, NC 28208. Applicant's representative: Jack F. Counts (same as above). *Source, special nuclear, and byproduct materials, radioactive materials, related equipment, component parts, and associated materials*, restricted to the transportation of commodities which because of size or weight do not require the use of special equipment, when transported as part of the same shipment with commodities which be-

cause of size or weight require the use of special equipment, (1) between points in FL in and east of Gadsden, Leon, and Wakulla Counties, on the one hand, and, on the other, points in ME, NH, VT, OH, WV, those in PA west of the Susquehanna River and those in the United States in and west of TX, AR, MO, IL, IN, and MI; (2) between points in Holmes, Washington, Bay, Jackson, Calhoun, Gulf, Liberty, and Franklin Counties, FL, on the one hand, and, on the other, points in ME, NH, VT, OH, WV, those in PA west of the Susquehanna River, and those in the United States in and west of MI, IN, IL, MO, AR, and TX (except those in TX south of U.S. Hwy 80); and (3) between points in FL west of Holmes, Washington, and Bay Counties, on the one hand, and, on the other, points in ME, VT, MI, IN, OH, WV, those in PA west of the Susquehanna River, those in IL on and north of U.S. Hwy 460, those in MO on and north of U.S. Hwy 50, those in KS on and north of U.S. Hwy 56, those in OK on and north of U.S. Hwy 56, those in NM on and north or west of U.S. Hwy 54, and those in the United States in and north or west of AZ, CO, NE, IA, and WI. The authority granted in this letter-notice is limited to a 5-year term. The purpose of this filing is to eliminate the gateway of points in GA.

No. MC 108341 (Sub-No. E16), filed November 9, 1977. Applicant: MOSS TRUCKING CO., INC., 3027 North Tryon Street, P.O. Box 8409, Charlotte, NC 28208. Applicant's representative: Jack F. Counts (same as above). *Source, special nuclear, and byproduct materials, radioactive materials, related equipment, component parts, and associated materials*, restricted to the transportation of commodities which because of size or weight require the use of special equipment, and contractor's materials, supplies, and equipment moving in connection therewith which do not necessarily require the use of special equipment, between points in DC, on the one hand, and, on the other, points in ME, NH, VT, WV, OH, those in PA west of the Susquehanna River, and those in the United States in and west of MI, IN, IL, MO, AR and TX. The authority granted in this letter-notice is limited to a 5-year term. The purpose of this filing is to eliminate the gateway of points in VA within the DC commercial zone.

No. MC 108341 (Sub-No. E17), filed November 9, 1977. Applicant: MOSS TRUCKING CO., INC., 3027 North Tryon Street, P.O. Box 8409, Charlotte, NC 28208. Applicant's representative: Jack F. Counts (same as above). *Source, special nuclear, and byproduct materials, radioactive materials, related equipment, component parts, and associated materials*, restricted to the transportation of commodities which

because of size or weight require the use of special equipment, and contractor's materials supplies, and equipment moving in connection therewith which do not necessarily require the use of special equipment, (1) between points in MD west of U.S. Hwy 522, on the one hand, and, on the other, points in ME, NH, VT, and those in the United States in and west of ND, MT, WY, CO, NM, and TX; (2) between points in that part of MD on and east of U.S. Hwy 522 and in and west of Frederick County, on the one hand, and, on the other, points in ME, NH, VT, and those in the United States in and west of the Upper Peninsula of MI, WI, IL, MO, AR, and TX; (3) between points in that part of MD east of Frederick County and west of U.S. Hwy 301, on the one hand, and, on the other, points in ME, NH, VT, OH, those in WV west of Grant and Hardy Counties, and those in the United States in and west of MI, IN, IL, MO, AR, and TX; (4) between points in MD east of U.S. Hwy 301, on the one hand, and, on the other, points in OH and WV and those in the United States in and west of MI, IN, IL, MO, AR, and TX; and (5) between points in MD on and east of U.S. Hwy 301, on the one hand, and, on the other, those in MD on and west of U.S. Hwy 15, those in PA on and west of U.S. Hwy 15, and those in NY on and west of NY Hwy 14. The authority granted in this letter-notice is limited to a 5-year term. The purpose of this filing is to eliminate the gateway of points in VA within the DC commercial zone.

No. MC 108341 (Sub-No. E18), filed November 9, 1977. Applicant: MOSS TRUCKING CO., INC., 3027 North Tryon Street, P.O. Box 8409, Charlotte, NC 28208. Applicant's representative: Jack F. Counts (same as above). *Source, special nuclear, and byproduct materials, radioactive materials, related equipment, component parts, and associated materials*, restricted to the transportation of commodities which because of size or weight require the use of special equipment, and contractor's materials, supplies, and equipment moving in connection therewith which do not necessarily require the use of special equipment, (1) between points in DE, on the one hand, and, on the other, points in OH, WV, and those in the United States in and west of MI, IN, IL, MO, AR, and TX; (2) between points in Sussex County, DE, on the one hand, and, on the other, points in that part of NY on and west of U.S. Hwy 15, that part of MD on and west of U.S. Hwy 15 and those in PA west of Bradford, Lycoming, Union, Snyder, Juniata, Cumberland, and Adams Counties; (3) between points in Kent County, DE, on the one hand, and, on the other, those points in NY on and west of NY Hwy 98,

those in MD on and west of U.S. Hwy 15, and those in PA in and west of McKean, Elk, Clearfield, Blair, Huntingdon, and Franklin Counties; and (4) between points in New Castle County, DE, on the one hand, and, on the other, points in MD on and west of U.S. Hwy 522 and those in PA in and west of Erie, Crawford, Venango, Clarion, Armstrong, Westmoreland, and Somerset Counties. The authority granted in this letter-notice is limited to a 5-year term. The purpose of this filing is to eliminate the gateway of points in VA within the DC commercial zone.

No. MC 108341 (Sub-No. E19), filed November 9, 1977. Applicant: MOSS TRUCKING CO., INC., 3027 North Tryon Street, P.O. Box 8409, Charlotte, NC 28208. Applicant's representative: Jack F. Counts (same as above). *Source, special nuclear, and byproduct materials, radioactive materials, related equipment, component parts, and associated materials*, restricted to the transportation of commodities which because of size or weight require the use of special equipment, and contractor's materials, supplies, and equipment moving in connection therewith which do not necessarily require the use of special equipment, (1) between points in PA east of the Susquehanna River on the one hand, and, on the other, points in the United States in and west of ND, SD, NE, KS, OK, AR, and TX; (2) between points in Bucks, Chester, Delaware, Lancaster, and Montgomery Counties, PA, on the one hand, and, on the other, points in IN, IL, IA, MI, MN, MO, and WI, and those in that part of OH west of a line beginning at Lake Erie, and extending along U.S. Hwy 250 to junction OH Hwy 60, then along OH Hwy 60 to the OH-WV State line, and that part of WV on and south of U.S. Hwy 33; (3) between points in Berks, Clarion, Dauphin, Lebanon, Lehigh, Monroe, Northampton, Pike, and Schuylkill Counties, PA, on the one hand, and, on the other, points in IA, MN, MO, WI, the Upper Peninsula of MI, and those in IL on and south of U.S. Hwy 52, those in IN on and south of a line beginning at the IN-IL State line, and extending along U.S. Hwy 52 to junction U.S. Hwy 40, then along U.S. Hwy 40 to the IN-OH State line, those in OH on and south of a line beginning at the OH-IN State line, and extending along U.S. Hwy 35 to junction U.S. Hwy 50, then along U.S. Hwy 50 to the OH-WV State line, and those in WV on and south of U.S. Hwy 33; and (4) between points in Lackawanna, Northumberland, Luzerne, and Wayne Counties, PA, on the one hand, and, on the other, points in IA, MN, MO, those in IL on and south of IL Hwy 9, those in IN on and south of Interstate Hwy 74, those in OH on and south of U.S. Hwy 50, and those in WV on and

south of U.S. Hwy 33. The authority granted in this letter-notice is limited to a 5-year term. The purpose of this filing is to eliminate the gateway of points in VA within the DC commercial zone.

No. MC 108341 (Sub-No. E20), filed November 9, 1977. Applicant: MOSS TRUCKING CO., INC., 3027 North Tryon Street, P.O. Box 8409, Charlotte, NC 28208. Applicant's representative: Jack F. Counts (same as above). *Source, special nuclear, and byproduct materials, radioactive materials, related equipment, component parts, and associated materials*, restricted to the transportation of commodities which because of size or weight require the use of special equipment, and contractor's materials, supplies, and equipment moving in connection therewith which do not necessarily require the use of special equipment, (1) between points in NJ, on the one hand, and, on the other, points in the United States in and west of WI, IL, MO, AR, TX, and the Upper Peninsula of MI; (2) between points in NJ (except those in Passaic, Sussex, and Warren Counties) on the one hand, and, on the other, points in IN; (3) between points in Passaic, Sussex, and Warren Counties, NJ, on the one hand, and, on the other, points in IN on and south of U.S. Hwy 35; (4) between points in Hunterdon, Morris, Passaic, Sussex, and Warren Counties, NJ, on the one hand, and, on the other, points in OH on and south of a line beginning at the OH-IN State line, and extending along U.S. Hwy 35 to junction U.S. Hwy 50, then along U.S. Hwy 50 to the OH-WV State line; (5) between points in Bergen, Mercer, Middlesex, Somerset, and Union Counties, NJ, on the one hand, and, on the other, points in MI and those in OH on and south or west of OH Hwy 14; (6) between points in NJ in and south of Burlington, Ocean, and Monmouth Counties, on the one hand, and, on the other, points in MI and OH; (7) between points in Hunterdon, Morris, Passaic, Sussex, and Warren Counties, NJ, on the one hand, and, on the other, points in that part of WV south and east of a line beginning at the WV-OH State line, and extending along U.S. Hwy 50 to the WV State line; (8) between points in Bergen, Mercer, Middlesex, Somerset, and Union Counties, NJ, on the one hand, and, on the other, points in WV, those in MD on and west of U.S. Hwy 15, and those in PA on and south of U.S. Hwy 30 and west of PA Hwy 75; and (9) between points in NJ in and south of Burlington, Ocean, and Monmouth Counties, on the one hand, and, on the other, points in WV, those in MD on and west of U.S. Hwy 15, and those in PA on and south of U.S. Hwy 322 and west of U.S. Hwy 522. The authority granted in this letter-notice is limited to a 5-year term. The purpose of this

filing is to eliminate the gateway of points in VA within the DC commercial zone.

No. MC 115826 (Sub-No. E86), filed February 14, 1978. Applicant: W. J. DIGBY, INC., P.O. Box 5088, Denver, CO 80217. Applicant's representative: Charles J. Kimball, Suite 350, 1600 Sherman Street, Denver, CO 80203. *Frozen foods*, in vehicles equipped with mechanical refrigeration, from the facilities of Holloway House, Inc., at Lafayette, IN, to points in OR on and west of a line beginning at the junction of U.S. Hwy 395 with the CA-OR State line, then along U.S. Hwy 395 to its junction with U.S. Hwy 26, then along U.S. Hwy 26 to its junction with OR Hwy 19, then along OR Hwy 19 to its junction with OR Hwy 206 near Condon, OR, then along OR Hwy 206 to its junction with U.S. Hwy 97, then along U.S. Hwy 97 to the OR-WA State line; and points in WA on and west of a line beginning at the junction of U.S. Hwy 97 with the OR-WA State line, then along U.S. Hwy 97 to its junction with U.S. Hwy 12 near Yakima, WA, then along U.S. Hwy 12 to its junction with WA Hwy 410, then along WA Hwy 410 to its junction with WA Hwy 169, then along WA Hwy 169 to U.S. Interstate Hwy 405, near Renton, WA, then along U.S. Interstate Hwy 405 to its junction with WA Hwy 522, then along WA Hwy 522 to its junction with WA Hwy 9, then along WA Hwy 9 to the WA-BC, Canada International Boundary, including service to all points in the commercial zones of cities located on the above line. Restriction: The authority granted herein is restricted to traffic originating at the above-named plantsite and storage facilities. The purpose of this filing is to eliminate the gateway of Alturas, CA.

No. MC 115826 (Sub-No. E87), filed February 14, 1978. Applicant: W. J. DIGBY, INC., P.O. Box 5088, Denver, CO 80217. Applicant's representative: Charles J. Kimball, Suite 350, 1600 Sherman Street, Denver, CO 80203. *Frozen meats, and frozen meat products*, in vehicles equipped with mechanical refrigeration, from the facilities of Holloway House, Inc., at Lafayette, IN, to points in OR on and west of a line beginning at the junction of U.S. Hwy 395 with the CA-OR State line, then along U.S. Hwy 395 to its junction with OR Hwy 31 near Valley Falls, OR, then along OR Hwy 31 to its intersection with U.S. Hwy 97, then south along U.S. Hwy 97 to its junction with OR Hwy 58, then along OR Hwy 58 to its junction with U.S. Interstate Hwy 5, then along U.S. Interstate Hwy 5 to its junction with OR Hwy 22 near Salem, OR, then along OR Hwy 22 to its junction with OR Hwy 18, then along OR Hwy 18 to its junction with U.S. Hwy 101, then along U.S. Hwy 101 to Neskowin, OR,

then along an imaginary line drawn to the Pacific Ocean, including service to all points in the commercial zones of cities located on the above-named line. Restriction: The authority granted herein is restricted to traffic originating at the above-named plantsite and storage facility. The purpose of this filing is to eliminate the gateway of Fredonia, AZ.

No. MC 115826 (Sub-No. E88), filed February 14, 1978. Applicant: W. J. DIGBY, INC., P.O. Box 5088, Denver, CO 80217. Applicant's representative: Charles J. Kimball, Suite 350, 1600 Sherman Street, Denver, CO 80203. *Frozen meat, frozen poultry, frozen fish, frozen butter, frozen eggs*, from the facilities of Holloway House, Inc., at Lafayette, IN, to points in TX on and west and on and south of a line beginning at the TX-MX International Boundary line near Laredo, TX, then along U.S. Hwy 83 to its junction with U.S. Hwy 70 near Paducah, TX, then along U.S. Hwy 70 to its junction with U.S. Hwy 87, then along U.S. Hwy 87 to Amarillo, TX, then along U.S. Hwy 66 to the TX-NM State line; points in NM on and west and on and south of a line beginning at the junction of U.S. Hwy 66 and the TX-NM State line, then along NM Hwy 66 to Tucumcari, NM, then along NM Hwy 104 to Las Vegas, NM, then along NM Hwy 3 to its junction with U.S. Hwy 64, then along U.S. Hwy 64 to its junction with U.S. Hwy 84, then along U.S. Hwy 84 to the NM-CO State line; points in AZ; and points in CA on and west and on and south of a line beginning at the junction of U.S. Hwy 395 and the NV-CA State line, then along U.S. Hwy 395 to Johnstonville, CA, then along CA Hwy 36 to its junction with CA Hwy 44, then along CA Hwy 44 to its junction with U.S. Hwy 89, then along U.S. Hwy 89 to its junction with U.S. Interstate Hwy 5, then along U.S. Interstate Hwy 5 to the CA-OR State line, including service to all points in the commercial zones of cities located on the above line. Restriction: The authority granted herein is restricted to traffic originating at the above-named plantsite and storage facilities. The purpose of this filing is to eliminate the gateway of Lubbock, TX.

No. MC 117815 (Sub-No. E2), filed May 24, 1975. Applicant: PULLEY FREIGHT LINES, INC., 405 Southeast 20th Street, Des Moines, IA 50317. Applicant's representative: Larry D. Knox, 900 Hubbell Building, Des Moines, IA 50309. *Such commodities* as are manufactured, sold, or distributed by persons engaged in the manufacturing, processing, and milling of grain products (except frozen foods), from Hillsdale, MI, to points in IL within the territory bounded by a line beginning at Galena, IL, and ex-

tending in a southeasterly direction to Savanna, IL, then south to Galesburg, IL, then east over U.S. Hwy 150 to junction IL Hwy 78, then north over IL Hwy 78 to Lyndon, IL, then north-east over IL Hwy 2 to Sterling, IL, then north over IL Hwy 88 to junction unnumbered highway, then north over unnumbered highway to junction IL Hwy 72, then north over IL Hwy 72 to junction IL Hwy 73, then north over IL Hwy 73 to Winslow, IL, then west along a line through Warren, IL, to Galena, IL, restricted to movements from, to or between wholesale and retail grocery houses, their warehouses, and retail outlets. The purpose of this filing is to eliminate the gateway of Clinton, IA.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-12051 Filed 5-2-78; 8:45 am]

[7035-01]

[Ex Parte No. MC 43]

LEASE AND INTERCHANGE OF VEHICLES BY MOTOR CARRIERS

Order

B and P Motor Lines, Inc., (MC 106074), Shelby Motor Lines, Inc. (MC 96763), and Forest Dale, Inc. (MC 12801), all under common control, have filed a petition for waiver of paragraphs (a)(3) and (c) of section 1057.4 of Lease and Interchange of Vehicles Regulations (49 CFR 1057).

We find: 1. That petitioners have an effective jointly administered safety program.

2. That petitioners will be able to more efficiently operate if permitted to trip lease.

3. That petitioners request for relief beyond that already provided by paragraph (c), as amended by Ex Parte MC 43 (Sub-No. 6), is not warranted.

It is ordered: 1. That waiver of paragraph (a)(3) is granted, provided petitioners remain in compliance with the motor carrier safety regulations of the U.S. Department of Transportation and under common control.

2. That waiver of paragraph (c) is denied.

Decided: April 11, 1978.

By the Commission, Motor Carrier Leasing Board, Board Members Joel E. Burns, Robert S. Turkington, and William F. Sibbald.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-12047 Filed 5-2-78; 8:45 am]

[7035-01]

[Ex Parte No. MC 43]

**LEASE AND INTERCHANGE OF VEHICLES BY
MOTOR CARRIERS****Order**

Cherokee Hauling & Rigging, Inc. (MC 127834 and numerous subs), Virginia Hauling Co. (MC 13806 and numerous subs), and Horne Heavy Hauling, Inc. (MC 35045 and numerous subs), all under common control, have filed a petition for waiver of paragraphs (a)(3) and (c) of section 1057.4 of the Lease and Interchange of Vehicles Regulations (49 CFR 1057).

We find: 1. That the Board has already considered and granted in part a similar petition seeking the identical waiver by the same petitioners.

It is ordered: 1. That waiver of paragraphs (a)(3) and (c) is denied.

Decided: April 5, 1978.

By the Commission, Motor Carrier Leasing Board, Board Members Joel E.

Burns, Robert S. Turkington, and William F. Sibbald. Board Member Turkington not participating.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-12046 Filed 5-2-78; 8:45 am]

[1505-01]**INTERSTATE COMMERCE
COMMISSION**

[Volume No. 70]

**MOTOR CARRIER, BROKER, WATER CARRIER
AND FREIGHT FORWARDER OPERATING
RIGHTS APPLICATIONS***Correction*

In FR Doc. 78-6726 appearing at page 11011 in the issue for Thursday, March 16, 1978, on page 11015, first column, change "MC 109397 (Sub-No. 383F)" to read "MC 109397 (Sub-No. 393F)".

sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409), 5 U.S.C. 552b(e)(3).

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[6320-01]

1

[M-126, April 27, 1978]

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 10 a.m., May 5, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: The DHL Corporation to make a presentation regarding the operation of couriers.

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

[S-914-78 Filed 5-1-78; 9:26 am]

[6351-01]

2

COMMODITY FUTURES TRADING COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 43, No. 82, April 27, 1978, page 18128.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., May 2, 1978.

CHANGES IN THE MEETING: The meeting is postponed until 10 a.m. on May 5, 1978.

[S-927-78 Filed 5-1-78; 4:00 pm]

[6570-06]

3

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: S-885-78.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m. (eastern time), Tuesday, May 2, 1978.

CHANGES IN THE MEETING: The date of the meeting is changed to Wednesday, May 3, 1978, and the time of the meeting is changed to 10 a.m. (eastern time).

A majority of the entire membership of the Commission determined by recorded vote that the business of the Commission required these changes and that no earlier announcement was possible.

The vote was as follows:

In favor of change.—Eleanor Holmes Norton, Chair; Daniel E. Leach, Vice Chair; Ethel Bent Walsh, Commissioner.

Opposed.—None.

CONTACT PERSON FOR MORE INFORMATION:

Marie D. Wilson, Executive Officer, Executive Secretariat at 202-634-6748.

This notice issued April 28, 1978.

[S-922-78 Filed 5-1-78; 2:23 pm]

[6712-01]

4

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Tuesday, April 25, 1978.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Special open Commission meeting.

MATTER CONSIDERED:

Agenda, Item No., and Subject

Complaints and Compliance—1—Petition for declaratory ruling from station KOAA-TV, Pueblo, Colo., as to applicability of section 315 to recall election.

NOTE.—The prompt and orderly conduct of Commission business did not permit announcement prior to the meeting.

CONTACT PERSON FOR MORE INFORMATION:

Samuel M. Sharkey, FCC Public Information Office, 202-632-7260.

Issued: April 25, 1978.

[S-919-78 Filed 5-1-78; 11:08 am]

[6712-01]

5

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 12 p.m., Tuesday, April 25, 1978.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Emergency closed Commission meeting.

MATTER CONSIDERED: Review of internal EEO practices.

The prompt and orderly conduct of Commission business did not permit announcement prior to the meeting.

CONTACT PERSON FOR MORE INFORMATION:

Samuel M. Sharkey, FCC Public Information Office, telephone 202-632-7260.

Issued: April 25, 1978.

[S-920-78 Filed 5-1-78; 11:08 am]

[6712-01]

6

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 2 p.m., Thursday, May 4, 1978.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portions open to the public:

Agenda, Item No. and Subject

Safety and Special Radio Services—1—Raymond Standring's application for review of order of revocation.

Common Carrier—1—Implementing accounting and reporting changes proposed in Docket 19129 (Phase II) rate case (Docket No. 21230).

Common Carrier—2—Amendment of section 21.13(f) of the Commission's Rules deferring state certification until after construction of DPLMRS station (Docket 20870, 61 FCC 2d 266).

Common Carrier—3—Petitions to reject and suspend Western Union's tariff filings.

FCC Nos. 268 and 269, transmittal Nos. 7347 and 7348 (C C Docket 78-97).

Common Carrier—4—COMSAT rate case settlement proposal (Docket No. 16070).

Cable Television—1—Garland B. Pugh's petition for waiver of section 76.55(b), the "no deletion" segment, of the Commission's Rules.

Aural—1—Application for modification of WRFS-FM, Alexander City, Ala. (BPH-10,122) filed by Piedmont Service Corp.

Aural—2—Application for a construction permit filed by Por Favor, Inc. (KUKA, San Antonio, Tex.).

Television—1—Application (BPCT-4911) of Amature Group (KQTV, St. Joseph, Mo.) for "semi-satellite" TV station in Topeka, Kans.

Complaints and Compliance—1—ASI Communications' request that its sales network be found consistent with Commission policy.

Complaints and Compliance—2—Review of ruling directing Tuscola Broadcasting Co. to allow public inspection of WKYO and WIDL program logs.

Portions closed to the public:

Agenda, Item No. and Subject

Hearing—1—Draft order responding to comments in the Los Angeles, Calif., 1110kHz proceeding (Docket Nos. 15752, 15754-56, and 15764-66).

Hearing—2—Draft decision in renewal of WBRL, Berlin, N.H. (Docket No. 20457).

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

CONTACT PERSON FOR MORE INFORMATION:

Samuel M. Sharkey, FCC Public Information Office, telephone 202-632-7260.

Issued: April 27, 1978.

[S-921-78 Filed 5-1-78; 11:08 am]

[6740-02]

7

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 18627, published May 1, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., May 3, 1978.

CHANGE IN THE MEETING: The following items have been added:

Item No., Docket No. and Company

ER-6.—ER77-277, Pennsylvania Power Co.
ER-7.—ER77-331, Central Power & Light Co.

KENNETH F. PLUMB,
Secretary.

[S-924-78 Filed 5-1-78; 2:23 pm]

[6210-01]

8

FEDERAL RESERVE SYSTEM.

TIME AND DATE: 11 a.m., Monday, May 8, 1978.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed statement to be presented to the Senate Committee on Banking, Housing, and Urban Affairs regarding S. 50, a bill entitled the "Full Employment and Balanced Growth Act of 1978."

2. Any agenda items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board, 202-452-3204.

Dated: April 28, 1978.

THEODORE E. ALLISON,
Secretary of the Board.

[S-913-78 Filed 5-1-78; 9:26 am]

[7030-01]

9

INDIAN CLAIMS COMMISSION.

TIME AND DATE: 10:15 a.m., May 10, 1978.

PLACE: Room 600, 1730 K Street NW., Washington, D.C.

STATUS: Open to the public.

Dockets 15-C, 29-A and 71, *Potawatomi*.
Docket 59, *Saginaw Chippewa*.
Docket 332-C, *Yankton Sioux*.
Docket 343, *Cayuga Nation*, et al.

FOR MORE INFORMATION:

David H. Bigelow, Executive Director, Room 640, 1730 K Street NW., Washington, D.C. 20006, telephone 202-653-6174.

[S-926-78 Filed 5-1-78; 3:36 pm]

[7590-01]

10

NUCLEAR REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Volume 43 No. 80, page 17629.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Wednesday, April 26, 2:45 p.m.

CHANGES IN THE MEETING: Meeting titled "Discussion of Proposed Licensing Legislation" (closed meeting) is Cancelled.

CONTACT PERSON FOR MORE INFORMATION:

Walter Magee, 202-634-1410.

Dated: April 28, 1978.

ROGER M. TWEED,
Office of the Secretary.

[S-925-78 Filed 5-1-78; 2:23 pm]

[7905-01]

11

RAILROAD RETIREMENT BOARD.

TIME AND DATE: 8:30 a.m., May 11, 1978.

PLACE: Board's meeting room on the 8th floor of its headquarters building at 844 Rush Street, Chicago, Ill., 60611.

STATUS: Part of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portions open to the public.

- (1) Request for temporary typing services.
- (2) Remodeling of the first floor information office.
- (3) Building security.
- (4) Recommendation concerning Syracuse, N.Y., district office.
- (5) Hearings and appeals backlog.
- (6) Rewrite of regulations on erroneous payments.
- (7) Delegation of functions by Board.
- (8) Questionnaire on employer status of certain companies.
- (9) General Services Administration proposal for commercial contractual cleaning service.
- (10) Social Security benefit reduction of partial payments by IMPACT program.
- (11) Technical amendments.
- (12) 1978 National meeting.
- (13) Soliciting applications under the Kalina decision.

Portions closed to the public:

- (14) Appeal of denial of waiver of recovery of overpayment, Nellie R. Olson.
- (15) Appeal of denial of waiver of recovery of overpayment, Marry L. Payne.
- (16) Appeal from referee's denial of annuity application, Irving Taub.
- (17) Appeal from referee's denial of disability annuity application, Francis J. Kan-kiewicz.
- (18) Appeal from referee's denial of disability annuity application, Troy L. Green.
- (19) Appeal from referee's denial of disability annuity application, Dallas L. Adkins.
- (20) Appeal from referee's denial of disability annuity application, Joe. B. Garee.
- (21) Appeal from referee's denial of disability annuity application, Samuel C. McCannless.
- (22) Appeal from referee's denial of disability annuity application, Elba Fannin.
- (23) Appeal from referee's denial of disability annuity application, John R. Sword.
- (24) Appeal of denial of waiver of recovery of overpayment, Agnes Reynolds. A
- (25) Appeal from referee's denial of disability annuity application, Vincent J. Michael.

CONTACT PERSON FOR MORE INFORMATION:

R. F. Butler, Secretary of the Board,

Com No. 312-751-4920; FTS No. 387-4920.

[S-923-78 Filed 5-1-78; 2:23 pm]

[7910-01]

12

RENEGOTIATION BOARD.

DATE AND TIME: Wednesday, June 7, 1978; 9:30 a.m.

PLACE: Conference Room, 4th Floor, 2000 M Street NW., Washington, D.C. 20446.

STATUS: Closed to public observation.

MATTERS TO BE CONSIDERED:

1. Howmet Corp., fiscal year ended December 31, 1971.
2. Eastalco Share, Inc., SII to Prime Aluminum & Steel Corp., fiscal year ended December 31, 1971.

CONTACT PERSON FOR MORE INFORMATION:

Kelvin H. Dickinson, Assistant General Counsel-Secretary, 2000 M Street NW., Washington, D.C. 20446, 202-254-8277.

Dated: April 28, 1978.

GOODWIN CHASE,
Chairman.

[S-915-78 Filed 5-1-78; 10:55 am]

[7910-01]

13

RENEGOTIATION BOARD.

DATE AND TIME: Wednesday, June 14, 1978; 9:30 a.m.

PLACE: Conference Room, 4th Floor, 2000 M Street NW., Washington, D.C. 20446.

STATUS: Closed to public observation.

MATTER TO BE CONSIDERED:

Lasko Metal Products, fiscal year ended April 30, 1972.

CONTACT PERSON FOR MORE INFORMATION:

Kelvin H. Dickinson, Assistant General Counsel-Secretary, 2000 M Street NW., Washington, D.C. 20446, 202-254-8277.

Dated: April 28, 1978.

GOODWIN CHASE,
Chairman.

[S-916-78 Filed 5-1-78; 10:55 am]

[7910-01]

14

RENEGOTIATION BOARD.

DATE AND TIME: Wednesday, June 21, 1978; 9:30 a.m.

PLACE: Conference Room, 4th Floor, 2000 M Street NW., Washington, D.C. 20446.

STATUS: Closed to public observation.

MATTER TO BE CONSIDERED:
Bata Shoe Co., Inc., fiscal year ended December 31, 1972.

CONTACT PERSON FOR MORE INFORMATION:

Kelvin H. Dickinson, Assistant General Counsel-Secretary, 2000 M Street NW., Washington, D.C. 20446, 202-254-8277.

Dated: April 28, 1978.

GOODWIN CHASE,
Chairman.

[S-917-78 Filed 5-1-78; 10:55 am]

[7910-01]

15

RENEGOTIATION BOARD.

DATE AND TIME: Wednesday, June 28, 1978; 9:30 a.m.

PLACE: Conference Room, 4th Floor, 2000 M Street NW., Washington, D.C. 20446.

STATUS: Closed to public observation.

MATTERS TO BE CONSIDERED:

1. The Entwistle Co., fiscal year ended September 29, 1968.
2. The Entwistle Co., SII to Van Zelm Associates, Inc., fiscal year ended September 29, 1968.

CONTACT PERSON FOR MORE INFORMATION:

Kelvin H. Dickinson, Assistant General Counsel-Secretary, 2000 M Street NW., Washington, D.C. 20446, 202-254-8277.

Dated: April 28, 1978.

GOODWIN CHASE,
Chairman.

[S-918-78 Filed 5-1-78; 10:55 am]

உதயசூரியன்

Office of Education

SCHOOL ASSISTANCE IN FEDERALLY AFFECTED AREAS

[4110-02]

Title 45—Public Welfare

CHAPTER I—OFFICE OF EDUCATION,
DEPARTMENT OF HEALTH, EDUCA-
TION, AND WELFAREPART 115—SCHOOL ASSISTANCE IN
FEDERALLY AFFECTED AREAS

Final Regulation

AGENCY: Office of Education,
Health, Education, and Welfare.

ACTION: Final regulation.

SUMMARY: This document sets forth certain requirements and criteria governing the awarding of Federal assistance to school districts for current expenditures in areas affected by Federal activities. The amended regulation presents to the public and applicants certain definitions and procedures used in the processing of such awards. These amendments are made necessary by Pub. L. 93-380.

EFFECTIVE DATE: Pursuant to section 431(d) of the General Education Provisions Act, as amended (20 U.S.C. 1232(d)), this regulation has been transmitted to the Congress concurrently with its publication in the FEDERAL REGISTER. That section provides that regulations subject thereto shall become effective on the forty-fifth day following the date of such transmission, subject to the provisions therein concerning Congressional action and adjournment.

FOR FURTHER INFORMATION
CONTACT:

Mrs. Edna Cave, Division of School Assistance in Federally Affected Areas, telephone: 202-245-1975.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 305(a)(1) of the Education Amendments of 1974 revised section 3, which covers the computation of entitlements based on numbers of federally-connected children. Section 305(a)(2) revised section 5, which covers the allocation of payments authorized under Pub. L. 81-874, the Impact Aid Program.

Although the matters of entitlement related to handicapped children and entitlements related to children from low-rent public housing were included in the notice of proposed rulemaking, they are not included in the regulation set forth below, but will be the subject of separate rulemaking.

The regulation set forth below encompasses the following: minor revision of the method of computing the federally-connected average daily attendance (ADA) as set forth in the definitions section (§ 115.3(e)(f)); addi-

tion of the term "county" to the definitions section (§ 115.3(p)); addition of the term "school year" to the definitions section (§ 115.3(q)); revision of sections in Subpart C concerning payments under section 3 when the percentage eligibility requirement is not met (§ 115.21); entitlements under amended section 3(e) (§ 115.22); reduction of financial assistance under section 5 of the Act due to insufficient appropriations (§ 115.25); and additions to Subpart C relating to the special savings clauses under Pub. L. 93-380 (§ 115.27). Certain sections of Part 115 are being republished without any major change being made other than revising references to Pub. L. 81-874 to reflect statutory changes, renumbering a regulatory section in one instance, and rewording for clarity. These sections are the final filing date for applications (§ 115.11(g)); changes in boundaries, classification, and governing authority of applicants (§ 115.20); payments under section 4(a) of the Act (§ 115.23); election under section 4(c) of the Act (§ 115.24); and determination of generally comparable local educational agencies (§ 115.30(a)(10), (b)(2)(iii)). The regulation does not include the matters of entitlements related to handicapped children (§ 115.28) and entitlements related to low-rent public housing children (§ 115.29); these matters will be the subject of separate rulemaking. The regulation also does not treat the matter of the prohibition against consideration by States of Pub. L. 81-874 payments in the administration of State aid (section 5(d) of the Act); that matter has been the subject of separate rulemaking (Subpart G of Part 115).

1. *Major amendments to the regulation.* A. *Definition of "county."* The term "county" has been defined in § 115.3(p) also to mean municipalities and other political subdivisions of a State that are not considered part of a county by the Secretary of Commerce in compiling data on counties.

B. *Continuation of eligibility when the 3 percent requirement is not met.* Section 3(c)(2)(A)(ii) of Pub. L. 81-874 provides eligibility for entitlement for two years immediately following the year in which a local educational agency meets the 3 percent requirement of section 3(c)(1)(B) of the Act, even though the agency fails to meet the 3 percent requirement during those two years. Section 115.21 sets forth the basis for eligibility under section 3(c)(2)(A)(ii), specifies the statutory limitation on the entitlement computation for the second year of continued eligibility under that section, and provides the benefits of the section to an applicant agency that was not in existence in one or both of the two school years before its application, or when an applicant is absorbed

by a successor local educational agency in a school district reorganization.

C. *Section 3(e), Pub. L. 81-874.* Section 3(e) of Pub. L. 81-874 provides for adjustments to entitlements for reductions in the numbers of "A" or "B" children resulting from a decrease or cessation of Federal activities within the State in which the local educational agency is located. Section 3(e) requires: (1) The number of "A" and "B" children in the school district to be less than 90 percent of the number of these children in the school district during the previous fiscal year; and (2) That the decrease or cessation of Federal activities results in a substantial decrease in the number of "A" and "B" children in the school district. Section 115.22 sets forth the basic provisions of section 3(e) and establishes how the Commissioner shall make determinations under these provisions. In § 115.22(b)(2), a decrease is considered substantial when it equals 3 percent of the current year's total ADA and is at least 10 in ADA in number. Section 115.22(b)(3) requires an applicant school district to identify the particular decrease or cessation of Federal activity which occurred within the State in which the district is situated and which resulted in the "substantial decrease" in the number of "A" and "B" children. Also, the school district must obtain certification of this decrease or cessation from the Federal agency involved in the activity.

D. *Reduced payments because of insufficient appropriations.* Section 5(c) of Pub. L. 81-874 sets forth a schedule of payments when appropriations are insufficient to pay all entitlements in full. Section 115.25(a) references this section of the Act and describes the procedure for determining payments in such a circumstance. Section 115.25(b) provides that, where part of an entitlement is attributable to children who live in low-rent public housing, that part shall not be paid under section 5(c)(2) of the Act. This special treatment is made necessary by the provision of section 5(e) of the Act, which requires a determination by the Commissioner of that part of an entitlement attributable to the number of "A" and "B" children who live in low-rent public housing, and which further provides that that part of the entitlement for a local educational agency shall not be allocated or paid under section 5(c)(2) of the Act.

E. *Savings clauses under Pub. L. 93-380.* There are four savings clauses which affect applicants under Pub. L. 81-874 that are contained in Pub. L. 93-380. These savings clauses are not part of Pub. L. 81-874 but have a direct bearing on the payments of local educational agencies under the Act. In response to public comment on the notice of proposed rulemaking, the

final regulation regarding the savings clauses has been reworded to provide clarity and to be specific regarding the provision of benefits under the savings clauses to applicants involved in reorganizations. Section 115.27 references these savings clauses and sets forth further provisions deemed necessary to clarify and implement them. Section 115.27(b) deals with section 305(b)(2)(A) of Pub. L. 93-380. This sentence clearly states that a local educational agency must be eligible for section 3, Pub. L. 81-874 entitlement in order to be eligible for payment under this savings clause, and it provides the benefits of this savings clause to certain applicants that were not in existence in earlier years (§ 115.27(b)(1)). A local educational agency which fails to meet the 3 percent eligibility requirement for an entitlement under section 3, Pub. L. 81-874 is continued as eligible for two more years. Although such an agency is eligible for a payment under this savings clause, it is subject nevertheless to a restriction on the amount of payment for the second year of continued eligibility (§ 115.27(b)(2)). Section 115.27(c) references the guaranteed payment provided by section 305(b)(2)(B) of Pub. L. 93-380 for school districts experiencing enrollment decreases because of military base closings. It describes the decrease of federally-connected children that is necessary for eligibility under this clause, explains that there must be a direct relationship between the decrease in the number of federally-connected children and an announced decrease or cessation of Federal activities on a military installation, and specifies what information must be provided to support the claim for the guaranteed payment. Also, it provides the benefits of this savings clause to certain applicants that were not in existence in the preceding year (§ 115.27(c)(4)). Section 115.27(d) references section 305(b)(2)(C) of Pub. L. 93-380 and explains that the number of "out of county" and "out of State" "B" children must equal at least 10 percent of the total number of "B" children for eligibility under the clause; it provides the benefits of this savings clause to certain applicants that were not in existence in the preceding year and provides that amounts attributed to this section in prior years are creditable to the current guarantee of this section. In § 115.27(e), relating to section 305(b)(2)(D) of Pub. L. 93-380, the method for computing the amount of payment under this savings clause is described.

2. *Comments on the proposed regulations.* Interested parties were given 30 days in which to submit written comments, suggestions, or objections regarding the proposed regulation. A

summary of the comments and responses to them is given. The comments are arranged in order of the sections of the final regulation to which they apply.

A. *General comments. Comment.* One commenter wrote that any tribe or tribal organization that operates an elementary or secondary school should be included among the local educational agencies eligible to receive financial assistance under Pub. L. 81-874.

Response. No change in the regulation is necessary. A tribe or a tribal organization recognized as a local educational agency is eligible. Section 403(6)(A) of Pub. L. 81-874 defines a local educational agency as a board of education "or other legally constituted local school authority having administrative control and direction of free public education in a county, township, independent or other school district located within a State." This definition can be altered only by amending the basic statute.

Comment. Two commenters objected because section 305(a)(1) of Pub. L. 93-380 does not include, among those to be counted in the computation of payment, children with a parent employed on Federal property situated in a State other than that of the applicant local educational agency.

Response. No change in the regulation is possible. The law can be changed by Congress but not by regulations.

Comment. Several commenters expressed difficulty in understanding the regulation.

Response. The wording of the regulation has been changed in many instances in an effort to make it more understandable. The new wording does not represent any change from the notice of proposed rulemaking in interpretation or implementation of the basic law.

B. § 115.3 Definitions. *Comment.* One commenter pointed out that sections 3(a) and 3(b) of Pub. L. 81-874 distinguished between residence in and out of the county in which the school district of a local educational agency is located, and that there was considerable inconsistency among definitions of counties by the Department of Commerce and other Federal and State agencies. The commenter said that the differences could work a substantial hardship on urban school districts not considered to be in the county, when the parents of students lived in those districts but worked on Federal property outside the city limits.

Response. The regulation has not been changed. According to section 403(11) of Pub. L. 81-874, the term "county" means those divisions of a State utilized by the Secretary of Commerce in compiling and reporting

data regarding counties. To consider municipalities and other political subdivisions as parts of counties when they are not considered as such by the Secretary of Commerce would be inconsistent with the law. The regulation clarifies the distinction between counties and other units of government that will be considered as counties for purposes of Pub. L. 81-874.

C. § 115.20 Changes in boundaries, classification, and governing authority of applicants. *Comment.* One commenter stated that the Office of Education lacked the authority to require the extensive reporting procedures outlined in § 115.20(a). The commenter said that the amendments in Pub. L. 93-380 did not affect § 115.20 and that legislative history had not authorized, nor had legislative intent been found to require, detailed reporting.

Response. No change has been made in the regulation. Since Subpart C was reworded, the entire subpart was repeated; substantial portions, including § 115.20, were changed only for greater clarity. Moreover, section 401(b) of Pub. L. 81-874 authorizes the Commissioner to promulgate regulations considered necessary to carry out the provisions of Pub. L. 81-874. Where changes in boundaries, classification, and governing authority of applicants occur, it is necessary to determine to whom payment of final entitlement is to be made and from whom any overpayment is to be collected. An applicant local educational agency that ceases to exist during a school year is not entitled to a payment that is based on an entire school year. The data requested are necessary to insure proper verification of the nature of the change that has taken place within an applicant school district.

D. § 115.22 Entitlements under section 3(e). *Comment.* One commenter pointed out that section 305(a)(1) of Pub. L. 93-380 amended section 3 of Pub. L. 81-874 to require, under paragraph (f), that determinations made with respect to the number of children an applicant is eligible to claim under that section for any fiscal year should be made on the basis of estimates only whenever actual satisfactory data were not available. The commenter said that a statement to that effect should be added to § 115.22 on entitlements under section 3(e).

Response. No change has been made in the regulation, because paragraph (f) applies to all of section 3, including section 3(e).

Comment. One commenter referred to the clause in § 115.22(b)(3) that the Commissioner would require local educational agencies to submit a certified statement identifying the particular decrease in or cessation of Federal activities. The commenter felt that the requirement would place on the local educational agency a responsibility

that belonged to the Commissioner of Education, that the Commissioner had the authority to get information from Federal agencies, and that the requirement was mandated neither by the statute nor by legislative history and must, therefore, be withdrawn.

Response. No change in the regulation has been made other than rewording for clarity. Section 401(b) of Pub. L. 81-874 authorizes the Commissioner to make regulations necessary to carry out the provisions of Pub. L. 81-874. A local educational agency is considered to be in a better position to be more aware of a particular decrease or cessation in local Federal activities than the Commissioner. However, the Commissioner is ready to render assistance to any applicant that explains in writing any difficulty in preparing or submitting the required statement.

E. § 115.25(a)(2) Reduction of financial assistance. *Comment.* One commenter pointed out a discrepancy between § 115.25(a)(2) of the proposed rule and section 5(c)(2) of Pub. L. 81-874, in which the former section excluded payments for section 2 entitlements from the second tier of payments, while the latter section expressly provided that they be paid at the rate of 35 percent of entitlement.

Response. The regulation would have been changed in accordance with the comment to provide for payment at the 35 percent rate. In the meantime, however, section 330(b) of Pub. L. 94-482, approved October 12, 1976, amended section 5(c) of Pub. L. 81-874 to provide that 100 percent of an entitlement for section 2 be paid under section 5(c)(1) (first tier of payments), thereby undoing the need for payment of any remaining portion of section 2 entitlement under sections 5(c)(2) and 5(c)(3). The regulation has been changed accordingly.

Comment. One commenter stated his interpretation of § 115.25(b) to mean that a local educational agency may classify a child who lives in a low-rent public housing unit with a parent who works on Federal property either under section 3(b) or as a low-rent housing student under section 3(a).

Response. No change in the regulation is necessary. The interpretation of the commenter is correct. A child eligible under section 3(a) may be claimed under that section or under one section 3(b) subcategory, but may not be claimed under both.

F. § 115.27 Special savings clause. *Comment.* One commenter complained that § 115.27 of the proposed rule provided little help in determining the amounts of entitlement under section 305(b)(2) of Pub. L. 93-380. The commenter said that the law left some question as to how entitlements under the section were to be computed, how the different entitlements were related to each other and to section 3 of

Pub. L. 81-874, and to what extent the Federal government was not obligated under them. The commenter also expressed a need for definition of the terms "payment" and "entitlement" as interpreted by the Office of Education.

Response. In response to the comment, the regulation has been changed to state clearly the guarantees provided by section 305(b)(2) of Pub. L. 93-380. The different savings clauses and section 3 of Pub. L. 81-874 are interrelated. Each clause specifically references section 3 in a manner which indicates that any payments computed under the clauses are related to the payments that have been computed already on the basis of entitlements under section 3. Each clause seeks to insure a level of guarantee for each eligible school district, to the extent that authorizing legislation can guarantee funds that are dependent on an appropriation. Each clause sets a different level of guarantee for which various school districts will be eligible. Some school districts will be eligible under more than one clause, but the clauses do not operate as unique entitlements to be added to the basic payment. Once a level of guarantee for a particular clause is achieved, then not only has the purpose of that clause been satisfied, but that same level does not also require satisfaction under another clause. Guarantees are satisfied by payments under section 3 of Pub. L. 81-874 and any additional amount under section 305(b)(2) of Pub. L. 93-380 necessary to reach the level of guarantee. In the context of Pub. L. 81-874, "entitlement" means the maximum amount of money the local educational agency has a legal right to receive as computed under section 3(d), and "payment" means the amount of money computed under section 5 that actually is tendered to the local educational agency.

Comment. One commenter expressed the belief that the regulation should include a reasonable time schedule for payments under section 305(b)(2) of Pub. L. 93-380, so that school districts entitled to those funds could anticipate the receipt of them.

Response. The regulation has not been changed. It is not considered appropriate to include payment schedules of entitlements in a regulation, because these schedules vary from year to year. No one can be certain when an appropriation will be available. Furthermore, sections 305 (b)(2) (A) and (D) of Pub. L. 93-380 may sometimes require supplemental appropriations.

Comment. One commenter argued that § 115.27(b) was in error in stating that a local educational agency had to be entitled to a payment under section 3 of the Act in order to qualify in section 305(b)(2)(A) of Pub. L. 93-380.

The commenter stated that, on the contrary, the agency, in order to be eligible, had to establish its right to payment under section 3 only once in any of the fiscal years 1974 through 1977.

Response. The regulation has not been changed. The first sentence of section 305(b)(2)(A)(i), "the amount paid to such agency . . . on the basis of the entitlement of that agency," implies that the agency shall have established its entitlement under section 3 before entitlements under section 305 (b)(2)(A) apply to that agency. Section 3(c)(2)(A)(ii) of Pub. L. 81-874 provides that an eligible local educational agency shall continue to be eligible under section 3 for two succeeding fiscal years in which it fails to meet that requirement. Therefore, to require, in § 115.27(b), eligibility under section 3 does not defeat the purpose of section 305(b)(2)(A)(i). Most school districts adversely affected by the revisions in section 3 made by Pub. L. 93-380 will have the ill effects lessened in some fashion by these provisions of section 305(b)(2)(A). An agency that was eligible in fiscal year 1975 continues to be eligible in 1976 and 1977, unless it fails to apply.

Other changes. A. The term "school year" has been added to the definitions in § 115.3(q) to distinguish in certain instances between "school year" and "fiscal year."

B. The reference to section 305(b)(2) of Pub. L. 93-380 has been omitted from § 115.11(g) as inappropriate to the topic of discussion. The paragraph refers to requirements for the amendment of a timely filed application for additional or alternative financial assistance. The information necessary for making determinations under section 305(b)(2) should be contained in the initial application document.

C. The phrase "following that" has been removed from § 115.11(g)(1) to reflect the change in the fiscal year which used to end on June 30 but which now ends on September 30.

D. For the purpose of clarification, the phrase "for the fiscal year two years or one year before the year for which application is made" has been inserted after the phrase "of the Act" in § 115.21(c)(1).

E. The old § 115.21(e) has been changed to § 115.21(f), and a new § 115.21(e) has been added to clarify that section 3(c)(2)(A)(ii) of Pub. L. 81-874 applies to certain applicants after June 30, 1975.

F. The last sentence which reads "This election is not subject to change after, and shall become final upon, the date of final payment for the fiscal year involved" has been deleted from § 115.24(b) to be consistent with § 115.11, which requires amendments to be filed no later than September 30 of the fiscal year for which assistance is sought.

G. Section 115.25 has been changed to reflect the amendment made by section 330(b) of Pub. L. 94-482, approved October 12, 1976, which provides 100 percent of entitlement to section 2 under section 5(c)(1) of Pub. L. 81-874.

H. Section 115.26 concerning the "failure or refusal of a local educational agency to educate children living on Federal property" has been withdrawn because it does not sufficiently clarify or add to the language of section 6(f) of Pub. L. 81-874. A review of section 6(f) will be undertaken and if necessary a rule will be proposed.

I. The original §115.27(e)(2) has been deleted. That section concerned internal administrative procedures related to the use of estimated entitlements and payments under section 305(b)(2)(D) of Pub. L. 93-380. Since it may be necessary on occasion to adjust those procedures, it is deemed inadvisable to set them forth in the form of a regulation.

NOTE.—The Office of Education has determined that this document does not contain a proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

(Catalog of Federal Domestic Assistance Program No. 13.478, School Assistance in Federally Affected Areas—Maintenance and Operation.)

Dated: January 5, 1978.

ERNEST L. BOYER,
U.S. Commissioner of Education.

Approved: April 26, 1978.

JOSEPH A. CALIFANO, JR.,
Secretary of Health, Education,
and Welfare.

Part 115 of Title 45 of the Code of Federal Regulations is amended as follows:

1. Section 115.3 is amended by revising paragraphs (e) and (f) and by adding paragraphs (p), and (q) to read as follows:

§ 115.3 Definitions.

(e) "Average daily attendance of federally-connected pupils" in each pertinent subcategory of federally-connected children under sections 3(a), 3(b), and 4(a) means the number determined in the manner described in this paragraph.

(1) At some specific date after the third day of the legal school session of the regular school year and before the cutoff date for filing Form RSF-1, a membership count of all pupils claimed in the various federally-connected subcategories must be made either by:

(i) Conducting a parent-pupil survey to determine the parent's employment on Federal property or active duty assignment in the uniformed services and the child's residence on Federal property; or by

(ii) Obtaining certifications from the various employers and the appropriate housing officials as to the employment of the parents of the children claimed or residence of the children on the specific date involved.

The membership count of all pupils made as of this specific date constitutes the official membership report of the applicant local educational agency for that date.

(2) The average daily attendance (hereinafter referred to as ADA) of federally-connected pupils shall then be obtained in the following manner.

(i) For the purposes of the application OE Form 4019 (Form RSF-1), the membership in each federally-connected subcategory shall be multiplied by the ratio of total ADA on the date of the membership count to the total membership as reported in the official membership and ADA report of the applicant district for the reporting period; and

(ii) For the purposes of the final report OE Form 4037 (Form RSF-3) the membership in each federally-connected subcategory shall be multiplied by the ratio of the total ADA for the period July 1 to the following June 30 to the total membership. This total ADA may include ADA based upon free public education provided in summer school as determined in accordance with State law.

(3) At the option of the applicant, a second membership count may be made. Procedures for a second membership count are set out in paragraph (f) of this section.

(20 U.S.C. 283(2)(b), 239(a), 244(10))

(f) "Average daily attendance of federally-connected pupils when determined by two counts of all pupils" means the number determined in the manner described in this paragraph.

(1) A first count of membership of each subcategory of federally-connected children must be made as described in paragraph (e) of this section. If conducted, a second count of membership must be made during the last quarter of the regular school year and uniformly for the entire local educational agency.

(2) A membership count of all pupils, made as of the same dates as the counts of federally-connected children, constitutes the official membership report of the applicant school district for those dates.

(3) Add the total membership for each count and divide the sum by two to compute an average total membership for both counts.

(4) Add the total federally-connected membership for each subcategory for both counts and divide the sum by two to compute an average federally-connected membership for each subcategory.

(5) Divide the total ADA for the period July 1 to the following June 30

by the average total membership obtained in paragraph (3) to obtain the ratio of ADA to membership.

(6) For the purposes of the final report OE Form 4037 (Form RSF-3), the average federally-connected membership for each subcategory obtained in subparagraph (4) shall be multiplied by the ratio of the total ADA to the average total membership. This total ADA may include ADA based upon free public education provided in summer school as determined in accordance with State law.

(20 U.S.C. 238(a)(b), 239(a), 244(10))

(p) "County" means, for the purpose of computing entitlement under section 3 of the Act and payments under section 5 of the Act as well as for the purpose of this part, those divisions of a State utilized by the Secretary of Commerce in compiling and reporting data regarding counties, subject to the following qualifications:

(1) Where a municipality or other political subdivision of a State is not treated as part of a county by the Secretary of Commerce in compiling and reporting data regarding counties, those municipalities and other political subdivisions are regarded as separate counties; and

(2) Where a local educational agency is situated in more than one county, the term "county" in the phrase "in the county in which the school district of such agency is located" includes any county in which the local educational agency is situated in whole or in part.

(20 U.S.C. 238(a)(b) and note; 20 U.S.C. 244(11); 88 Stat. 534)

(q) "School year" as used in this part, means the period between July 1 of one year and June 30 of the subsequent year.

(20 U.S.C. 242)

2. Section 115.11 is amended by revising paragraph (g) to read as follows:

§ 115.11 Final date for filing applications.

(g) A timely filed application may be amended to apply for additional or alternative financial assistance under sections 3(d)(2)(B), 3(d)(3)(B)(ii), 3(e) or section 4(d) of the Act, if the amendment is:

(1) Filed no later than September 30 of the fiscal year for which assistance is sought; and

(2) Accompanied by a detailed statement setting forth the basis of the claim and a justification for the requested entitlement.

(20 U.S.C. 240(a)(1))

3. Part 115 is amended by revising subpart C to read as follows:

Subpart C—Payments

Sec.

- 115.20 Changes in boundaries, classification, and governing authority of applicants.
- 115.21 Payments under section 3 when percentage eligibility requirement is not met.
- 115.22 Entitlements under section 3(e).
- 115.23 Payments under section 4(a).
- 115.24 Election under section 4(c).
- 115.25 Reduction of financial assistance under sections 2, 3, and 4 due to insufficient appropriations.
- 115.26 [Reserved]
- 115.27 Adjustments to payments related to special savings clauses under Pub. L. 93-380.

AUTHORITY: 20 U.S.C. 238-240, 244(11).

Subpart C—Payments**§ 115.20 Changes in boundaries, classification, and governing authority of applicants.**

(a) If the applicant is a party to any merger, consolidation, annexation, deconsolidation, or other similar action which may affect its boundaries, identity, governing authority, classification, or control, it must notify the Commissioner as soon as practicable of the effective date of that action, its extent and character, and the legal authority under which the action was or is to be effected. This notification must include the following information:

- (1) The effective date of change in boundaries or organization, for all purposes, including administrative and fiscal;
- (2) Identification by name, district, number and address of all former agencies involved and the application number for each applicant involved in any change;
- (3) A statement describing the specific type of change, with a citation of the section or sections of the State law under which the change was accomplished;
- (4) The legal name of the resulting successor agency (even if the name and legal classification of the applicant agency are retained after a change);
- (5) A statement whether assets and liabilities of the former agency or agencies have been transferred to the successor agency, or whether a settlement agreement has been made and, if so, the effective date of this action;
- (6) A statement whether a new board of education has or will assume control and management of the successor agency and, if so, the effective date; and
- (7) The name and address of the authorized representative for purposes of the Act, who shall be duly designated by the governing body of the successor agency. Evidence of this official designation must be submitted in the form of a copy of the resolution duly recorded in the minutes of the proceedings of the governing body.

(b) A local educational agency is not entitled to any payment on the basis of an application under sections 3 or 4 of the Act (except as provided in paragraph (d) of this section) if:

(1) The change in the organization of the local educational agency is effective within the school year covered by the application and occurs prior to the close of the regular school term of that year; and

(2) The local educational agency thereby ceases to be a legally constituted local educational agency.

(c) Except as provided in § 115.21(d), a local educational agency which assumes administrative control and direction of free public education in all or a portion of the area of the previously existing applicant, may (if it is not already an applicant under the section involved or if it files an application in accordance with § 115.11(d) have its entitlement under section 3(d)(1) or 4(a)(1) of the Act for the entire fiscal year determined by either of the following, whichever is more favorable to it:

(1) On the basis of the entire area under its jurisdiction on the last day of that year; or

(2) On the basis only of the area acquired by the local educational agency from the previously existing local educational agency, except that the latter basis may only be used:

(i) For an application under section 3 of the Act for which a favorable finding has been made (or would have been made in due course but for the change in district organization) on the basis of the estimates required under section 3(c)(1) of the Act with respect to the previously existing agency; and

(ii) For an application under section 4 of the Act for which such a favorable finding has been made (or would have been made in due course but for the change in district organization) under section 4(a)(1).

(d) Any payment made before the Commissioner considered the change in the organization of the local educational agency must be repaid to the United States except to the extent that:

(1) It is accounted for by the adjustments made in the entitlements of any successor applicant local educational agency under either paragraph (c) of this section or paragraph (d) of § 115.21; and

(2) Any balance remaining or the entire payment made is found by the Commissioner not to be in excess of the amount to which the pre-existing local educational agency would have become entitled on the basis of the number of federally-connected children:

(i) Who were not covered by any other application; and

(ii) To whom free public education was provided by the previously exist-

ing local educational agency or by any successor non-applicant local educational agency.

(20 U.S.C. 237(c), 244(6)(A))

§ 115.21 Payments under section 3 when percentage eligibility requirement is not met.

(a) Under the exception provided in section 3(c)(2)(A)(ii) of the Act, an applicant continues to be eligible for payment under the Act, even if it fails to meet the 3 percent eligibility requirement of section 3(c)(1)(B) of the Act, for two years following any fiscal year in which it: (1) was determined to be eligible under that requirement and (2) received a net payment under section 3.

(b) The number of children determined for the purpose of establishing the amount of entitlement under section 3 in the second fiscal year of the two-year period specified in paragraph (a) may not exceed 50 percent of the number of children in each federally-connected subcategory for the last fiscal year during which the applicant met the eligibility requirement of section 3(c)(1)(B) of the Act.

(c) If an applicant local educational agency was not in existence in either one or both of the two fiscal years preceding that for which application is made, that agency may nevertheless receive the benefit of the provisions of paragraph (a) of this section if that agency is:

(1) Composed only of territory which was formerly included in a predecessor agency or agencies which were determined to have met the percentage eligibility requirement contained in section 3(c)(1)(B) of the Act for the fiscal year two years or one year before the year for which application is made; and

(2) The predecessor agency or agencies received a net payment under section 3 of the Act for the fiscal year two years or immediately before that for which application is made.

(20 U.S.C. 238(c)(2)(A)(ii))

(d) If any local educational agency which had filed an application in a timely manner under section 3 of the Act and was entitled to payment by virtue of paragraph (a) or (c) of this section ceases to be a legally constituted local educational agency as a result of a district reorganization which is effective before the close of the regular school term within the fiscal year covered by the application (thereby becoming subject to the provisions of § 115.20(b)), a successor local educational agency which:

(1) Files an application in accordance with § 115.11(d) (unless already an applicant under section 3); and

(2) Assumes administrative control and direction of free public education

in all or a portion of the area of the previously existing applicant before the close of the applicant's regular school term, may have its application processed on the basis of the:

(i) Area acquired from the previously existing local educational agency, and

(ii) Rights of that agency, without regard to the 3 percent requirement, subject to appropriate adjustment on account of payments made to the previously existing local educational agency.

(20 U.S.C. 238, 244(6)(A).)

(f) Section 305(b)(2)(A) of Pub. L. 93-380 governs the case of any applicant that was determined to have met the 3 percent eligibility requirement before July 1, 1975, but which fails to meet this requirement in any school year ending before July 1, 1977.

(88 Stat. 553; Sen. Rep. No. 93-763, 205.)

§ 115.22 Entitlements under section 3(e).

(a) An applicant eligible under section 3(e) of the Act is entitled to receive, for the fiscal year in which eligibility is determined and for any of the three succeeding fiscal years, not less than 90 percent of the amount to which the applicant was entitled under section 3 of the Act for the preceding fiscal year.

(b) For an applicant to be eligible under section 3(e) of the Act:

(1) The number of children determined with respect to an applicant under sections 3(a) and 3(b) of this Act must be less than 90 percent of the number of children determined under those sections of the Act for the applicant during the preceding fiscal year. In making that determination, the Commissioner shall divide the current fiscal year's sections 3(a) and 3(b) ADA by the preceding fiscal year's ADA for those sections.

(2) There must have been a substantial decrease in the number of children determined under sections 3(a) and 3(b) of the Act resulting from a decrease or cessation of Federal activities, in the State within which the applicant is located, during the year for which an application is filed. A decrease is substantial when it equals 3 percent of the current fiscal year's total ADA and at least 10 in ADA.

(3) The applicant must submit a statement to the Commissioner identifying the particular decrease in or cessation of Federal activities; the statement must be certified as to its accuracy by an authorized official of the Federal agency associated with the conduct of the affected activities.

(c) Any section 3(e) payments to an applicant are considered for all other purposes as payments attributable to determinations of children under section 3(b)(2)(A) of the Act.

(20 U.S.C. 238(e).)

§ 115.23 Payments under section 4(a).

(a) Payment under section 4(a) is intended to compensate a local educational agency for sudden and substantial increases in pupils whose attendance in school during the current school year is a direct result of Federal activities. This payment may be made only when the Commissioner determines that, although the applicant has made a reasonable tax effort, the education of the increased number of children places a substantial and continuing financial burden on the applicant, and the applicant cannot secure funds from other sources adequate to provide these children a level of education equivalent to that maintained in generally comparable school districts in the same State.

(b) In the first fiscal year following payment under section 4(a), a payment not to exceed 50 percent of the entitlement in this preceding year under section 4(a) will be made, subject to the availability of funds. The payment may not include any entitlement due to those increases in section 3(a) or 3(b) of the preceding year for which payment was made.

(20 U.S.C. 239(a).)

(c) No payments will be made under section 4(a) of the Act unless:

(1) The increase in ADA of federally-connected pupils in the current year over the ADA of those children in the preceding year is at least equal to 5 percent of non-Federal ADA in the preceding year, and

(2) The increase in the current total ADA over the preceding year's total ADA is at least 5 percent of the preceding year's total ADA.

(20 U.S.C. 293(a)(1).)

(d) No payments will be made under section 4(a) of the Act unless the parents of the pupils entering the schools of the local educational agency for the first time during the current school year enter the area of that agency to accept employment because of Federal activities on or after February 1 of the preceding year. An increase in activities of the United States for the purpose of section 4(a) of the Act may be found to have occurred in circumstances which include the following:

(1) Activities resulting from Federal contracts in the current fiscal year when the number of employees engaged in the Federal activity increased over the preceding fiscal year; and

(2) Activities where production resulting from Federal contracts changed so as to require employees with new skills for this production; therefore, new employees migrated into the area of the local educational agency.

(e) Activities of those persons not employed by the United States or by a contractor of the United States shall

not be considered to be a direct result of activities of the United States for the purposes of section 4(a).

(20 U.S.C. 239(a)(1); 83-703, House Report No. 703, July 3, 1953, 12.)

§ 115.24 Election under section 4(c).

Under section 4(c) of the Act, a local educational agency may elect to count for eligibility and payment under section 4(a) of the Act the entire increase in the number of children who are:

(a) In average daily attendance at its schools during the school year; and

(b) Otherwise eligible to be counted under section 3 of the Act. This election may be made only if an application under section 4 is filed in a timely manner on Form RSF-1 in accordance with § 115.11.

(20 U.S.C. 239(c).)

§ 115.25 Reduction of financial assistance under sections 2, 3, and 4 due to insufficient appropriations.

(a) Section 5(c) of the Act determines the portions of entitlements that will be allocated and paid when an appropriation for a fiscal year is not enough to fund in full all entitlements under sections 2, 3, and 4. It establishes funding priorities as follows:

(1) Before any other allocation is made, funds will be allocated to provide 100 percent of entitlements under section 2 and 25 percent of entitlements under section 3.

(2) Funds will be allocated to provide varying percentages (ranging from 28 to 75 percent) of entitlements under section 3; the varying percentages, as provided in section 5(c)(2) of the Act, are as follows:

(i) Seventy-five (75) percent for section 3(a) children in local educational agencies where those children comprise 25 percent or more of the total number of children in average daily attendance,

(ii) Sixty-three (63) percent for section 3(a)(1) (children residing on Federal property with a parent employed on Federal property in the same State as the local educational agency),

(iii) Sixty-five (65) percent for section 3(a)(2) (children who reside on Federal property and have a parent in one of the uniformed services or children residing on Indian lands),

(iv) Thirty-two (32) percent for section 3(b)(1) (children residing on Federal property),

(v) Thirty-two (32) percent for section 3(b)(2)(A) (children residing with a parent employed on Federal property within the county of the local educational agency),

(vi) Twenty-eight (28) percent for section 3(b)(2)(B) (children residing with a parent employed on Federal property outside the county but in the same State of the local educational agency), and

(vii) Thirty-five (35) percent for section 3(b)(3) (children with a parent in one of the uniformed services). However, these allocations are subject to two restrictions. First, none of these allocations will be made unless all of them can be made. Second, entitlements attributable to children residing on, or residing with a parent employed on, low-rent public housing property (described in section 403(1)(C) of the Act) are excluded from these allocations under section 5(c)(2).

(3) Remaining portions of entitlements under section 3 and all entitlements under section 4 will be allocated on a prorated basis to the extent permitted by available funds.

(b) Any part of an entitlement determined under section 3 of the Act attributable in whole or in part to children residing on, or residing with a parent employed on low-rent public housing property, is considered to be attributable in its entirety to these children. Thus, payments for entitlements based in whole or in part on low-rent public housing children are to be excluded in their entirety under section 5(c)(2).

(20 U.S.C. 240(c)(e); 20 U.S.C. 244(1)(c); Sen. Rep. No. 93-1026, 162 (1974))

§ 115.26 [Reserved]

§ 115.27 Adjustments to payments related to special savings clauses under Pub. L. 93-380.

(a) Special savings clauses in section 305(b)(2) of Pub. L. 93-380 guarantee, to the extent of available appropriations, an overall payment to eligible applicant local educational agencies. These special savings clauses do not create separate entitlements to be added individually to the basic Pub. L. 81-874 payment. The amount of payment under this section is computed by subtracting any payment under section 3 of the Act from the overall payment that is guaranteed by section 305(b)(2) of Pub. L. 93-380. Any remainder is then allocated among the savings clauses for which the applicant is eligible in whatever order the Commissioner considers appropriate.

(b) *Section 305(b)(2)(A) of Pub. L. 93-380.* (1) The first sentence of clause (A)(i) of section 305(b)(2) insures that any local educational agency which is entitled to receive a payment under section 3 of the Act for a current year will not receive less than 80 percent or 90 percent, as determined below, of the payment that was received under section 3 for the preceding year.

(i) The guarantee of 90 percent applies to any local educational agency which was eligible for a payment under section 3 of the Act for fiscal year 1973 that was equal to 10 percent or more of the agency's total current expenditures for fiscal year 1973.

(ii) The guarantee of 80 percent applies to any other local educational agency entitled to receive a payment under section 3 for a current year.

(iii) If an applicant local educational agency was not in existence in fiscal year 1973, it may nevertheless receive the 90 percent guarantee if:

(A) It is composed only of territory which was the entire territory of a predecessor agency or agencies which received a payment under section 3 for fiscal year 1973 and met the 10 percent eligibility requirement; and

(B) Either the applicant local educational agency or all of the predecessor agencies comprising it received a net payment under section 3 for the preceding fiscal year that determines the amount of the guarantee.

(iv) If an applicant local educational agency was not in existence in the preceding fiscal year, it may nevertheless receive the 80 percent guarantee if it is composed only of territory which was formerly included in a predecessor agency or agencies which met the section 3 eligibility requirements and received a net payment under that section for the preceding fiscal year.

(2) The second sentence of clause (A)(i) of section 305(b)(2) is effective only in fiscal years 1976 and 1977. It permits an applicant local educational agency to be eligible for payment under section 3 of the Act, even if the agency fails to meet the 3 percent eligibility requirement of section 3(c)(1)(B) of the Act, for two years after the fiscal year the agency last met that requirement and received a payment under section 3. For the second year of payment under this provision, payment may not exceed 50 percent of the payment that was received for the last fiscal year in which the percentage eligibility requirement was met.

(i) Applicants subject to the maximum payment limitations under the second sentence of clause (A)(i) may not receive more than that maximum payment under the guaranteed payment provisions in the first sentence of clause (A)(i).

(ii) Payments to eligible applicants based on the second sentence of section 305(b)(2)(A)(i) of Pub. L. 93-380 are not subject to the special funding requirement of section 305(b)(2)(A)(ii) of the Act.

(88 Stat. 553; Sen. Rep. 93-1026, 163-164; Sen. Rep. No. 93-763, 57.)

(c) *Section 305(b)(2)(B) of Pub. L. 93-380.*

(1) Clause (B) of section 305(b)(2) guarantees a level of payment to applicants which have suffered a decrease in section 3 ADA as a direct result of decreases in or cessations of Federal activities on military installations that were announced after April 16, 1973. The level of payment for the first year

of eligibility and each succeeding year for which an application is filed is 90 percent of the agency's entitlement under section 3 for the preceding year.

(i) For the purposes of this clause, the term "military installation" means a facility, camp, or base operated by or under the jurisdiction of the Armed Forces of the United States.

(ii) The announcement of a decrease or cessation of Federal activities must be an official announcement or order issued by the Federal government.

(2) No payment will be made under clause (B) unless:

(i) The decrease in section 3 ADA is at least 10 percent for any one of the following:

(A) Fiscal year 1974 section 3 ADA compared to fiscal year 1973 section 3 ADA, or

(B) Fiscal year 1975 section 3 ADA compared to fiscal year 1974 section 3 ADA, or

(C) Fiscal year 1975 section 3 ADA compared to fiscal year 1973 section 3 ADA,

(ii) The decrease in section 3 ADA was a direct result of a decrease in or cessation of Federal activities on a military installation, and

(iii) The decrease in or cessation of Federal activities was due to a specific announcement issued by the Federal government on or after April 16, 1973.

(3) In order to receive a payment under clause (B), an applicant must provide to the Commissioner whatever data and information that the Commissioner considers necessary and appropriate to establish the basis for payment.

(4) If an applicant local educational agency was not in existence in the preceding fiscal year, it may nevertheless receive the guarantee under clause (B) if it is composed only of territory which was formerly included in a predecessor agency or agencies which were determined eligible under clause (B) and received a net payment under either section 3 or clause (B) for the preceding fiscal year.

(88 Stat. 534; Sen. Rep. No. 93-763, 57-58, 206-207 (1974).)

(d) *Section 305(b)(2)(C) of Pub. L. 93-380.*

(1) Clause (C) is designed to offset the immediate reduction in payments affected by the amendments to section 3(b) of the Act under Pub. L. 93-380. Those amendments eliminated payments based on children residing with a parent employed on property which is outside the State of the applicant and reduced payments for children residing with a parent employed on Federal property which is outside the county of the applicant but within the same State. Clause (C) guarantees that a payment for section 3(b) children will not be less than 90 percent of the amount the applicant received for

section 3(b) children for the preceding fiscal year. The amount received for 3(b) children may have been received through 3(b) and the hold harmless benefits (section 305(b)(2) of Pub. L. 93-380).

(2) An applicant is eligible under Clause (C) if, during the year of application, the number of children who either:

(i) Reside with a parent employed on Federal property in a State other than the State in which the applicant is situated, but which is within reasonable commuting distance of the applicant, or

(ii) Reside with a parent employed on Federal property in a county outside the county in which the applicant is situated but within the same State, is equal to 10 percent or more of the number of children eligible under section 3(b) of the Act for that year.

In determining whether a particular Federal property is within "reasonable commuting distance", any prior determination for that property under Pub. L. 81-874 is controlling, unless the applicant presents new information justifying, in the Commissioner's opinion, a reconsideration of that determination. Any Federal property located in the same State as the applicant is considered to be within reasonable commuting distance.

(3) If an applicant local educational agency meets the eligibility require-

ments for Clause (C) but was not in existence in the preceding fiscal year, it may receive the Clause (C) guarantee based on the net amount paid for the preceding year under section 3(b) to any predecessor agency or agencies; however, all of the territory of the predecessor agency or agencies must be part of the applicant local educational agency.

(88 Stat. 535; Sen. Rep. No. 93-763, 206-207 (1974.))

(e) *Section 305(b)(2)(D) of Pub. L. 93-380.* (1) Payment under clause (D) is designed to compensate a local educational agency, which is eligible to receive a payment under section 3 of the Act, for having to share an appropriation with low-rent public housing entitlements.

(2) The amount of payment under clause (D) is computed by subtracting the applicant's payment for section 3 (as allocated under section 5(c) of the Act) from the amount of funds that the applicant would have received for section 3 had there been no payments under the current appropriation for low-rent public housing entitlements.

(88 Stat. 534, 535.)

4. §115.30 is amended by revising paragraphs (a)(10) and (b)(2)(iii) to read as follows:

§115.30 Determination of generally comparable local educational agencies.

(a) * * *

(10) Estimated current fiscal year per pupil cost for the State (in those States in which an applicant requests an entitlement under section 3(d)(2)(B) or 4 of the Act). The actual per pupil costs shall be submitted to the Commissioner at such time as they become available for each group.

(20 U.S.C. 238(d), 255(5).)

(b) * * *

(2) * * *

(iii) The estimated percent of change in per pupil cost for all local educational agencies in the State, in the aggregate, for the current fiscal year from the second preceding fiscal year, for each State wherein an applicant requests an entitlement under section 3(d)(2)(B) or section 4. Since comparable district data are submitted for the second year preceding, the estimated percent of increase factor for adjusting the per pupil cost to the current year will suffice for all purposes prior to the final payment. However, the State shall submit actual data to the Commissioner for the purpose of computing final payments.

(20 U.S.C. 238(d), 244(5).)

[FR Doc. 78-12000 Filed 5-2-78; 8:45 am]

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WEDNESDAY, MAY 3, 1978
PART III



**CONSUMER
PRODUCT SAFETY
COMMISSION**

**MINIATURE CHRISTMAS
TREE LIGHTS**

Proposed Safety Standards

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[6355-01]

CONSUMER PRODUCT SAFETY COMMISSION

[16 CFR Part 1208]

MINIATURE CHRISTMAS TREE LIGHTS

Proposed Safety Standard

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes a consumer product safety standard for miniature Christmas tree lights and similar miniature decorative lights in order to eliminate or reduce unreasonable risks of injury from electrical shock and fires that the Commission has preliminarily determined are associated with the lights. The Commission also proposes for public comment recommendations regarding materials, labeling, and provisions to address special hazards to children presented by plugs and connectors of the lights.

DATES: (1) The Commission proposes that the standard be applicable to all miniature Christmas tree lights manufactured after December 1, 1979.

(2) Written comments on the proposal must be received by the Commission by July 3, 1978.

(3) Interested persons will have an opportunity to make an oral presentation of data, views, or arguments on June 7, 1978 at 9:30 a.m. Those wishing to make oral presentations should notify the Office of the Secretary (202-634-7700) by May 31, 1978. A summary or copy of testimony is to be submitted to the Office of the Secretary by June 2, 1978.

(4) The time during which the Commission must either publish a final rule or withdraw this proposal is extended to March 15, 1979.

ADDRESSES: Written comments should be submitted to the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. All material which the Commission has that is relevant to this proceeding, including any comments that may be received on this proposal, may be seen in, or copies obtained from, the Office of the Secretary, 3rd Floor, 1111 18th Street, NW., Washington, D.C. 20207. The oral presentation will be conducted in the Commission's 3rd floor hearing room, 1111 18th Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Carl W. Blechschmidt, Office of Program Management, Consumer Product Safety Commission, Washington, D.C. 20207, 301-492-6557.

A. BACKGROUND

In this document the Commission proposes a comprehensive standard to

address the unreasonable risks of injury from electrical shock and fires that the Commission has preliminarily determined are associated with miniature Christmas tree lights and similar miniature decorative lights. The proposed standard is comprehensive and complete as a result of the many ways in which these products can result in electrical fire and shock. Although the proposed standard contains many performance tests and many requirements, a large number of these requirements and tests can be met by manufacturers by using components that are made of certain known, available materials and are built to certain existing specifications. Therefore, for purposes of complying with the certification provisions of section 14(a)(1) of the act (15 U.S.C. 2063(a)(1)), the Commission believes that manufacturers will be able to base certification for miniature Christmas tree lights, in large part on certification of components by component suppliers. (See Section H of this preamble for a more comprehensive discussion of certification.)

Since its formation in 1973, the Consumer Product Safety Commission has received reports of incidents and injuries due to electrical shocks and fires associated with miniature Christmas tree lights and similar miniature decorative lights. In 1974, a number of manufacturers voluntarily undertook recall of certain decorative lighting as a result of the reports received at that time and the encouragement of the Commission's staff.

The Commission's decision to initiate the standard development proceeding for miniature Christmas tree lights and similar miniature decorative lights, as a result of the shock and fire hazards associated with these products, was based primarily on the CPSC 1975 Christmas Decorative Light Survey and technical analyses of Christmas light products. The 1975 Christmas Decorative Light Survey involved Commission inspection of manufacturers, importers and major retailers of miniature Christmas tree lights to identify hazardous products. Based on information obtained from this survey, the Commission was made aware that defects such as exposed live electrical conductors in miniature Christmas tree light products could very likely lead to hazardous situations. For example, when a miniature Christmas tree light string with an exposed electrical conductor, such as a bare wire or a dislodged lampholder contact, is plugged into a standard receptacle outlet, the probability that a person will contact a live part and receive a dangerous electric shock is significantly higher when compared to a miniature Christmas tree light string with no such exposed electrical conductor.

The Commission also has other information about injuries associated with miniature Christmas tree lights and similar miniature decorative lights that indicates a need for remedial action, including:

1. Reports of in-depth investigations of injuries, conducted by the Consumer Product Safety Commission (CPSC).

2. National Electronic Injury Surveillance System (NEISS) surveillance data.

3. CPSC Bureau of Epidemiology Special Report: Christmas Tree Lights—August 1976.

4. CPSC Bureau of Epidemiology Special Report—Christmas Tree Lights—December 1976.

5. Engineering Analysis of Miniature Christmas Lights with Regard to Safety Hazards, by the CPSC Bureau of Engineering Sciences—December 20, 1976.

6. Fire Marshal's reports—Dallas, Tex. (1969-1975).

7. Statistics furnished to the Commission by the National Fire Protection Association.

8. Information obtained from the International Association of Electrical Inspectors and originally furnished by electrical inspectors in 63 jurisdictions (1973-1974).

9. CPSC 1975 Christmas Decorative Light Survey.

Copies of all these sources may be obtained from the Office of the Secretary.

After considering the foregoing information, the Commission preliminarily determined that the following unreasonable risks of injury are associated with miniature Christmas tree lights and similar miniature decorative lights:

1. *Shock hazards.* Shock hazards can be caused by direct contact with exposed live electrical conductors or by contact with an intervening conductive object (such as metallic tree ornament or accessory) that is in contact with the exposed conductor. The following are examples of characteristics of these lights which can create shock hazards:

a. Bare wire exposed where the wire enters lampholders (sockets) or plugs.

b. Plug and receptacle fittings that readily come apart.

c. Exposed lamp leads.

d. Cracked lampholders.

e. Lampholder contacts which come out when the bulb is removed, thereby exposing the live contacts.

2. *Fire hazards.* Fire hazards can be caused by certain characteristics of the subject lights. The following are examples of characteristics of these lights that can create fire hazards:

a. An exposed conductor which shorts to a grounded object, thereby causing arcing and/or excessive heating of flammable materials. The short

may not trip the circuit breaker or blows the circuit fuse in time to prevent a fire caused by the lights because the short may be intermittent or may not draw sufficient short-circuit current. The conductor can be exposed due to the features explained in the description of shock hazards in items 1 (a), (c), (d), and (e) above.

b. A flammable grade of thermoplastic material that becomes heated by abnormal current flow, defective lamps or other characteristics of these lights that result in excessively high temperatures. This class of material melts when heated and can flame. Melting can result in exposure of live parts, or molten, burning material dripping on tree branches, paper, carpets, or other flammable material near the lights.

c. Wire without proper overcurrent protection. Wire smaller in size than No. 20 American Wire Gauge (AWG) can overheat under short circuit conditions before the house wiring branch circuit overcurrent protective device can open. Wire smaller than No. 20 AWG is commonly used on the subject lights.

On the basis of the above information the Commission preliminarily determined that a consumer product safety standard is necessary to eliminate or reduce the specified unreasonable risks of injury associated with miniature Christmas tree lights and similar miniature decorative lights.

The Commission received information about two existing voluntary standards which are relevant to miniature Christmas tree lights and similar miniature decorative lights:

a. Underwriters Laboratories Inc. (UL)—"Standard for Christmas Tree and Decorative-Lighting Outfits—UL 588" (13th edition, November 15, 1974 revised December 30, 1974 and February 4, 1976).

b. National Ornament and Electric Lights Christmas Association (NOEL)—"NOEL Standard Midget Sets, September 16, 1975."

The voluntary standards include many beneficial features. It appeared to the Commission, however, that application of these standards would not eliminate or sufficiently reduce the unreasonable risks of injury associated with the miniature Christmas tree lights and other miniature decorative lights. The Commission believed that requirements in addition to those set forth in the voluntary standards were reasonably necessary to adequately protect the public against these risks of injury. In addition, the Commission recognized that it may be difficult to ensure continuing compliance with the voluntary standards, especially since the miniature Christmas tree light industry is composed mainly of small manufacturers located outside the United States.

As the result of these concerns, the Commission began the proceeding to develop a consumer product standard applicable to miniature Christmas tree lights by publishing a notice in the *FEDERAL REGISTER* of March 31, 1977 (41 FR 17154). In that notice, which was published in accordance with section 7(b) of the Consumer Product Safety Act (15 U.S.C. 2056), the Commission invited interested persons to submit an existing standard as a proposed consumer product safety standard or to submit an offer to develop a recommended safety standard. In addition, the Commission made specific observations about the adequacy of the voluntary standards to address the identified hazards and suggested promising approaches for provisions that could be used in a standard to reduce the risks of injury.

In response to the March 31 *FEDERAL REGISTER* notice, the Commission received two offers to develop a recommended standard applicable to miniature Christmas tree lights, from Underwriters Laboratories Inc., Melville, N.Y., and from National Consumers League, Washington, D.C. The Commission also received a submission as an existing standard from the National Ornament and Electric Lights Christmas Association (NOEL), New York.

The Commission subsequently accepted the offer of the National Consumers League (NCL), 1028 Connecticut Avenue, NW., Suite 522, Washington, D.C. 20036, to develop a consumer product safety standard applicable to miniature Christmas tree lights. On June 30, 1977, the Commission published in the *FEDERAL REGISTER* (42 FR 33354) a notice of acceptance of the offer, a summary of the terms of the offer, and an invitation to interested persons to participate in NCL's development of the recommended standard.

The period for NCL's development of the recommended standard ended on November 16, 1977. On that date NCL submitted material, including the following:

(1) NCL's proposed safety standard, (2) a conceptual rationale, which describes the basis on which the offeror's reviews panel determined the content of the standard submitted to the Commission, (3) a report which provides a section by section technical rationale for the specific language of the standard presented by the offeror to the Commission, and (4) an Economic Analysis Report.

The Commission's staff conducted an extensive evaluation of the standard which NCL recommended. It was necessary to conduct additional tests to determine the feasibility and effectiveness of some of the recommended requirements to address the electric shock and fire hazards associated with the product.

Copies of all materials which the Commission has considered during this process may be obtained from, or inspected in, the Office of the Secretary, 3rd Floor, 1111 18th Street NW., Washington, D.C. 20207.

In the *FEDERAL REGISTER* of January 16, 1978 (43 FR 2185), the Commission extended by 75 days the time allowed it to either publish a proposed standard or withdraw the notice of proceeding. The Commission extended the time because of the need for further development of one test in the proposed standard, the need to resolve several technical areas where the Commission staff and offeror may disagree, and the need for additional time to include packaging and labeling requirements in the proposal. In the *FEDERAL REGISTER* of April 5, 1978 (43 FR 14322) the Commission further extended by 30 days the time allowed it to either publish a proposed standard or withdraw the notice of proceeding. The additional extension was necessary in order to allow for review of this complex and lengthy document. The time period for publishing the proposed standard or withdrawing the notice of proceeding expires May 3, 1978.

As a result of its consideration and evaluation of the recommended standard submitted by NCL, the Commission has determined that some changes and additional requirements were necessary in order to reduce risks of injury from electrical fire and shock. In addition, the recommended standard was re-written to provide additional technical clarity for the requirements and to put the standard in a form suitable for publication in the Code of Federal Regulations. Therefore, the standard proposed below differs from the recommended standard submitted by the offeror. The major changes, and the reasons for the changes are discussed in this preamble.

B. THE PROPOSED STANDARD

The standard which is proposed below is designed to reduce or eliminate the unreasonable risks of injury that the Consumer Product Safety Commission has preliminarily determined are associated with miniature Christmas tree lights.

The specifications of the standard will be Subpart A of Part 1208. In the interests of clarity, tests constituting an integral part of the standard have been placed in Subpart B. At Subpart C, the Commission has included recommendations concerning materials and provisions to address special hazards to children presented by plugs and connectors as well as recommended labeling. Although these provisions are recommendations rather than requirements and are not part of the standard, the Commission has includ-

ed them in the the proposal for reference and welcomes comments on these recommendations. The Commission intends to add compliance provisions (including a certification rule under section 14 of the CPSA) in the future. These will be set forth as Subpart D.

For the provisions of the standard recommended by NCL which the Commission has proposed in Part 1208, the Commission, except as noted below, adopts the rationale for these provisions that was submitted to the Commission by NCL. The rationale for the changed and additional provisions of the proposal is given below in the discussion of the requirements of each section of the standard. The proposed Part 1208 will be enforced using the U.S. Customary units for length, force, etc. that are given in the part. However, for convenience, the Metric equivalents are also given.

Subpart A of the proposed standard consists of 10 sections covering the following subject matter:

- Sec.
- 1208.1 Purpose, Scope, and Application.
 - 1208.2 Effective Date.
 - 1208.3 Definitions.
 - 1208.4 Abbreviations.
 - 1208.5 Materials.
 - 1208.6 Wiring and Assembly Requirements.
 - 1208.7 Component Requirements.
 - 1208.8 Overcurrent Protection.
 - 1208.9 Lamps and Lampholders.
 - 1208.10 Packaging and Labeling.

(The effective date of the proposed standard is discussed at section G of this preamble.) An explanation of the scope of the proposal and the technical provisions of the proposed standard (§§ 1208.5-1208.10) is given below.

At subpart B, the standard contains 29 tests to reduce the identified risks of injury associated with miniature Christmas tree lights. A brief summary and explanation of these tests is also given below.

SCOPE OF THE PROPOSAL (SECTION 1208.1(B))

The requirements set forth in the proposed standard for Miniature Christmas Tree Lights, 16 CFR Part 1208, apply to lighting units intended for use with Christmas trees or other Decorative applications. As defined at § 1208.3(i), miniature Christmas tree lights are lighting units which (1) have lamps or lampholders electrically connected by wires in series or in combinations of series path, (2) are equipped with or intended to be used with lamps that dissipate four watts of power or less per lamp when the product is connected to a 120 volt rms source, and (3) are intended to be supplied electric power from a nominal 120 volt receptacle. Strings of lamps or lampholders which are sold as part of rigid decorations, such as wreaths or frames, are covered by the standard. In addition, a lighting unit meeting

these requirements would be covered by the standard even if it contains additional electrical elements other than lamps, such as switches, or an additional lamp or lamps which dissipate more than four watts of power.

MATERIALS (1208.5)

Section 1208.5 of the proposed standard is one of several sections in the standard designed to protect consumers from electrical fire and shock hazards that may result from contact with improperly or insufficiently insulated electrical conductors. The requirements are based on the function of the insulating material, since the function of the material is a significant factor in determining the likelihood of injury resulting from failures of the material. Section 1208.5(a) of the proposal divides insulating materials into three categories, and prescribes requirements for materials in each category.

The first category, Class X, is for parts of the lighting unit that do not directly contact, enclose, or support electrically live parts. Examples of these parts are shades, diffusers, reflectors, simulated needles, leaves, and supporting or decorative frames. Section 1208.5(a)(1) requires that these materials pass the Decorative Part Downward Burning Rate Test, at § 1208.37, to ensure that they are not highly flammable. Their proximity to the electrical circuit which is a potential ignition source, is the reason for the test. These parts are usually decorative in nature, and could propagate a local flaming condition into a major conflagration if highly flammable. The Decorative Part Downward Burning Rate test distinguishes materials which have rapid flaming characteristics as provided in § 1208.37. Class X materials must also pass the Cascade Failure Simulation Test, at § 1208.29, and the Short Circuit Simulation Test, at § 1202.28. These tests evaluate the overall performance of the lighting unit under stress conditions that may be encountered while in use. The Cascade Failure Simulation Test and the Short Circuit Simulation Test simulate what might occur, for example, in a situation where a short or fault occurs and decorative parts ignite.

The second and third categories, Classes Y and Z, are for materials which contact or are relied upon to enclose or support electrically live parts.

The requirements of § 1208.5(a) (2) and (3) applicable to Class Y and Z materials are intended to ensure that materials which contact or are relied upon to enclose or support electrically live parts do not deteriorate or lose their effectiveness as barriers (1) between the potentially dangerous, available electrical energy and the consumer, (2) between the available electrical energy and the surrounding objects

which may be electrically conductive and grounded, and (3) between electrically live parts of different polarity which could short together. Class Y materials are insulating materials contacting live parts in instances where the electrical energy is limited by fuses or similar devices. Examples of these materials are lamp bases, lampholders, and certain shades and diffusers that are integrally molded as part of the lamp bases. Class Y materials are not required to be flame retardant, since the materials are used with limited-energy live parts.

The recommended standard submitted by NCL distinguished Class Y and Class Z materials based on the normal operating current of the circuit. The proposed standard distinguishes Class Y and Z materials based on the maximum current rating of the overcurrent protective device. The purpose of this change is to ensure that flammable materials are not used as insulation for electrical components except where the electrical energy is limited by a special fuse or other protective device.

Although Class Y materials are used with limited-energy live parts, these parts can present a potential lethal shock hazard if the materials deteriorate or otherwise lose their effectiveness. Melting of the materials could occur, presenting a fire and shock hazard in use while under conditions well within the energy limit permitted by the overcurrent protection of the fuse of similar device. Section 1208.5(a)(2) requires that Class Y materials not melt to expose live parts at a temperature of 248° F (120° C) by requiring that these materials meet the Heating Test for Lamps and Lampholders at § 1208.38. The temperature value is based on readily attainable temperatures on materials near the lamps, the primary heat source. This temperature can result from the heat of the bulbs and can lead to exposed live parts when the lights are clustered. This temperature can also be obtained when an improper replacement lamp is placed in a light string. Class Y materials must also meet the tests prescribed for Class X materials at § 1208.5(a)(1), since highly flammable materials could also present a hazardous condition.

Class Z materials contact or are relied upon to enclose or support electrically live parts whose steady current flow under normal operating conditions is either not limited by an overcurrent protective device or is limited by an overcurrent protective device rated at more than 300 milliamperes. In addition, Class Z materials are insulation for wire, plugs, fuseholders, and connectors regardless of the presence of the overcurrent protective device. Class Z insulating materials on lampholders can be exposed to the energy

that fuses or similar devices rated 300 milliamperes can let through. The 300 milliamperes value far exceeds the normal 100-200 milliamperes current flow for a single series circuit of lights and is indicative of a serious overcurrent condition which, even when slightly exceeded, could cause localized high-heat conditions that might be incipient causes for fire and shock hazards. Section 1208.5(a)(3) requires Class Z materials to be flame retardant since the potentially available energy they insulate may otherwise cause serious overheating leading to fires and exposed live parts. These materials must pass the appropriate component flammability tests, at §§ 1208.21 and 1208.27. The test in § 1208.27 which does not apply to wire insulation, is based on a standard material flame test for judging flame retardant characteristics (Underwriters Laboratories Standard UL 94). The test for wire insulation flammability is based on a test in the Underwriters Laboratories Bulletin UL 62, dated February 24, 1978.

Additional requirements for insulating materials including wire insulation material at § 1208.7(a)(3), are contained under particular component requirements in the proposal, at § 1208.7. In § 1208.7(b)(5), insulating materials for plugs and connectors can be phenolic or urea composition thermosetting materials (materials that are inherently flame retardant and do not flow when heated) or one of the other specified Class Z materials when tested for flammability.

In § 1208.9, insulating materials used for lamps and lampholders must have insulating qualities to withstand the applied 1250 volts of the Dielectric Test for Lampholder and Lamp Assembly, § 1208.25. This value of voltage is a typical value used in material and assembly testing and is generally based on the formula: Two times the maximum voltage for the appliance (125 volts for Christmas lights) plus 1000 volts.

The proposed standard contains design specifications for conductive materials at § 1208.5(b). The Commission believes that it would be impractical to develop a performance specification for conductive materials, since extensive evaluation of the metallurgical, mechanical, electrical and chemical properties of all possible conductive materials would be needed in order to determine the appropriate tests. Copper and copper alloys (brass) have traditionally been used in appliances and are required for miniature Christmas tree lights by § 1208.5(b). Other conductors, such as iron, aluminum, gold, and silver may have serious economic or safety related drawbacks for application in miniature Christmas tree lights. Section 1208.5(b) provides that electrically live parts except for

lamps and wire must be copper or have at least 60 percent copper by weight in the alloy (at least 80 percent for screw shell holders for lamps, fuses and other parts.) These percentages are consistent with minimums for electrical conductor brass of Underwriters Laboratories (UL) and industry standards.

If the Commission receives comments indicating that manufacturers wish to use another specified conductive material that does not present a hazard when used in miniature Christmas tree lights the Commission will consider changing the provisions of § 1208.5(b).

At § 1208.5(b) the proposal requires that metallized tinsel and other conductive flexible strips and threads, 0.25 in. (6.4 mm) and longer, and located within 1 in. (25.4 mm) of a lampholder, fuseholder, plug or connector shall pass the Conductive Tinsel Test (1208.41). The purpose of the test is to protect against exposed conductive materials that contact live parts from transmitting potentially hazardous current levels of 5 milliamperes and higher to people who might contact the material. Live parts are accessible to contact by strips and threads at lampholder and fuseholder openings, particularly during lamp and fuse servicing, and at plugs and connectors, particularly plug blades and receptacle openings. The Conductive Tinsel Test was added to the proposal by the Commission after a review by the Commission staff of the construction of miniature Christmas tree lights indicated the extensive use of metallized tinsel.

WIRING AND ASSEMBLY REQUIREMENTS (1208.6)

At § 1208.6 the proposal lists several requirements concerning the method of wiring of light strings in order to minimize overheating or the chance of having an exposed live part that could result in fire or shock.

Contact surfaces that are used to routinely make and break electrical circuits must be of adequate size and shape for proper mating of electrical parts in order to avoid overheating. Wire strands if used for contact surfaces would be of indeterminate or variable size and shape. This condition could result in overheating. Therefore, the proposal at § 1208.6(a) prohibits the use of wire as a contact mating mechanism.

The proposal, at § 1208.6(b) requires the wire connecting two components to be continuous and free of splices or taps. Such connections are a source of electrical failure which could lead to the exposure of live parts of other electrical abnormalities.

At § 1208.6(c), the proposal requires wire within components to be secured so that conductors are not exposed and will not become exposed when

tension is applied to the wire as provided in the performance tests for components, §§ 1208.23 and 1208.35.

The proposal, at § 1208.6(d), requires, lights to be designed so that wire current ratings are not exceeded at normal operating currents. If wire current ratings are exceeded, wire insulation may be degraded, thus resulting in the exposure of live parts and possible short circuits.

Section 1208.6(e) requires overcurrent protection for wires of cross-sectional area less than No. 20 AWG to provide protection against fire when short circuit conditions exist in a light string.

Section 1208.6(f) requires each miniature Christmas tree light to have an attachment plug or an add-on connector for connection to the power supply source. Miniature Christmas tree lights without attachment plugs or add-on connectors could present risks of injury from fire and shock. This requirement would eliminate the situation in which lights falling within the definition of the product covered by this standard were not provided with suitable means for electrical interface with the supply source.

Section 1208.6(g) requires that strings of lights with relatively small gauge wire (smaller in size than No. 20 AWG) must be routed in a pair of two or more wires twisted together longitudinally, except between components mounted on a frame, such as lampholders fixed in a tree-top star decoration. The purpose of this requirement is to give the wiring added strength against breakage with the resulting exposure of live parts.

The proposed standard at § 1208.6(h) and (i) included requirements applicable to the assembly of miniature Christmas tree lights. The purpose of these requirements is to protect consumers from exposure to live parts and shorts. At § 1208.6(h) the proposal requires separation of live parts. Opposite polarity conductors must be separated to prevent across-the-line shorts. Live parts must be separated from exposed dead metal parts in order to prevent shorts to outside dead metal parts. The parts must be separated by a spacing of at least 0.047 inch (1.19 mm) in order to adequately withstand the potential of 120 volts from bridging or tracking across the gap and creating the short.

Section 1208.6(i) of the proposal requires live parts to be insulated or otherwise enclosed so that they cannot be contacted by the probe in figure 1 of the regulation. The probe is the tip portion of a probe developed by Underwriters Laboratories to judge the accessibility of live parts based on testing a large sample of adults and children. The purpose of the requirement is to prevent persons from contacting live parts.

The recommended standard submitted by NCL did not contain requirements for separating live and dead metal parts and did not contain general requirements concerning the accessibility of live parts. However, the proposed standard includes these as general provisions in order to address fire and shock hazards that may arise where additional components, such as switches, are used.

COMPONENT REQUIREMENTS (1208.7)

The proposal at §1208.7 includes design and performance requirements for components of miniature Christmas tree lights.

WIRE (1208.7) (a)

Wire construction requirements at §1208.7(a) and performance tests at §1208.13-22 are based almost entirely on tests in the Underwriters Laboratories (UL) Standard UL 62 for Types XT and FXT wire, the types of wire used in miniature Christmas tree lights that meet the UL specifications. However, the performance test for wire insulation flammability is based on UL Bulletin, Subject 62, dated February 24, 1978.

Section 1208.7(a)(1) requires copper wire to be used. Breaking strength requirements are included at §1208.7(a)(1) in order to establish that soft annealed copper is used for flexibility and bendability. The recommended standard submitted by NCL contained a requirement that specified the use of "soft annealed" copper wire. In order to more accurately measure the desired characteristics of the wire, the Commission has added the maximum breaking strength requirement for the copper wire.

Wire gauge requirements are included at §1208.7(a)(2) and Table B in order to ensure that the wire has proper current carrying capability.

At section 1208.7(a)(3) the proposal requires wire insulation to be composed of polyvinyl chloride or a copolymer of vinyl chloride and vinyl acetate. These are the materials for general, appliance wiring insulation, and the ones on which the performance tests are based. These materials are the only known ones presently being used for miniature Christmas tree lights. At this time the Commission believes that it would be impractical to develop performance tests for different materials. If the Commission receives comments indicating that manufacturers wish to use another material for wire insulation that does not present a hazard when used in miniature Christmas tree lights, the Commission will consider changing this provision in the final standard.

This section also provides for minimum average insulation thickness and minimum insulation thickness at any point. The purpose of these specifica-

tion is to ensure adequate wire coverings for protection against shorts and contact with live parts.

The proposal, at §1208.7(a)(4) includes requirements for the separation of parallel conductors by at least 1.5 times the required minimum average insulation thickness for a single conductor wire. The purpose of this requirement is to ensure adequate separation of conductors of parallel cord and still permit a common web of insulation joining the two conductors. Section 1208.7(a)(5) requires that a minimum of 0.013 inches (0.33 mm) of insulation should remain on each conductor after the parallel cord has been torn apart to separate the conductors. The purpose of this requirement is to prevent live parts from being exposed when the conductors are separated, thereby presenting a shock or shorting hazard.

The proposal, at §1208.7(a)(6), also requires wire to pass tests for insulation resistance (1208.13), elongation and tensile strength (1208.14), heat-shock (1208.15), deformation (1208.16), cold-bend (1208.17), weathering (1208.18), dielectric (1208.19), abrasion (1208.20), flammability (1208.21), and flexing (1208.22).

PLUGS AND CONNECTORS (1208.7) (b)

At §1208.7(b), the proposal includes detailed design and performance requirements for plugs and connectors. These requirements are based on provisions in the Underwriters Laboratories (UL) Standard for Attachment Plugs and Receptacles (UL 498).

At §1208.7(b)(1) the proposal includes requirements concerning the size and locations of plug blades. These requirements are included to protect consumers against electrical fire and shock hazards, since the blades must properly engage the standardized power supply receptacles of wall outlets and extension cords with a fit that does not result in exposed or misplaced live parts. Special thickness specifications are included in §1208.7(b)(2) to protect consumers from shock where plug blades are constructed of folded-over metal stock.

At §1208.7(b)(3), the proposal includes requirements for minimum plug body dimensions. The purposes of these dimensions is to provide an adequate distance between the blades and surfaces likely to be gripped during plug insertion and removal.

Section 1208.7(b)(4) includes requirements concerning the size and location of receptacle slots. These requirements are included to protect against fire and shock hazards since receptacles must properly accept the standardized blades of plugs with a fit that does not result in exposed or misplaced live parts.

As previously noted in the discussion of insulating materials, the insulating

materials for plugs and connectors in §1208.7(b)(5) are required to be certain specified flame retardant materials: Phenolic; urea; pliable, molded, natural or synthetic rubber, or a combination thereof; a polymer of vinyl chloride; or a copolymer of vinyl acetate. These materials are the only known ones presently being used. At this time the Commission believes that it would be impractical to develop performance tests for different materials. If the Commission receives comments indicating that manufacturers wish to use another material for insulating plug and connector live parts that does not present a hazard when used in miniature Christmas tree lights the Commission will consider changing this provision in the final standard.

Section 1208.7(b)(6) of the proposal requires plugs and connectors to be capable of withstanding a 75 pound force crush test, as provided in the crush test for plugs and connectors §1208.34. This test is included since attachment components are particularly susceptible to being stepped on, thus shorting or exposing live parts or otherwise damaging the component. The 75 pound force test value is representative of accidental adult crush force values.

The proposal, at §§1208.7(b)(7), (8), (9), and (10), requires plugs and connectors to pass a series of mechanical tests to evaluate the integrity of these bodies to enclose live parts. Plugs and connectors must pass a wire pull test, §1208.35, a wire insulation pull test, §1208.36, and a blade push test, §1208.33 and a blade pull test, §1208.32.

The proposal, at §1208.7(b)(11), requires electrically live parts within receptable openings to be enclosed so that they are inaccessible when tested by a probe (figure 1) that represents contact by persons to protect against electric shock.

Section 1208.7(b)(12) of the proposal prohibits openings in enclosures of plugs and connectors except for the slots of receptacles and the openings from which blades project. In addition, this section prohibits the use of parts of plug and connector bodies that are solely held together by friction. If friction only is relied on, the parts may readily come apart, exposing live parts to shorts and contact by persons. The proposal requires positive detent action, latches, screws, or other fasteners in order to hold together plug and connector insulating parts that are relied upon to enclose live parts.

The proposal, at §1208.7(b)(13) requires receptacles to permit full insertion of the mating blades of plugs or add-on connectors. This requirement is intended to avoid the exposure of live parts. Receptacles must pass the Receptacle Insertion-Withdrawal Test, §1208.31.

The proposal, at § 1208.7(b)(14) prohibits parts of plugs and connectors from having a temperature rise in excess of 30° C (54° F) when operated under maximum current conditions. Such a temperature rise indicates either a high resistance connection or an inadequate conductor. This condition could lead to dangerously high temperatures which could ultimately short, expose live parts, or ignite. The recommended standard submitted by NCL did not include an overload condition as part of the heating test for receptacles. The proposed standard includes an overload condition in the heating test for receptacles based on that contained in UL 498 in order to test receptacles under the conditions of making and breaking contact with a plug while under load.

Section 1208.7(b)(15) of the proposal requires plugs and connectors to pass each of the following tests: Plug and Connector Blade Pull Test (1208.32), Plug and Connector Blade Push Test (1208.33), Receptacle Insertion-Withdrawal Test (1208.31), Strain Relief Test for Plug and Connector Connections (1208.35), Security of Insulation at Plugs and Connectors (1208.36), Crush Test for Plugs and Connectors (1208.34), Temperature Test for Plugs, Connectors, and Fuseholders (1208.30), and Flammability Tests for Class Z Applications (Except Wire) (1208.27).

OVERCURRENT PROTECTION (1208.8)

The proposal, at § 1208.8, requires miniature Christmas tree lights to have fuses or similar protective devices to prevent overcurrent conditions that could cause degradation of materials leading to fire and shock hazards. The overcurrent protective devices are required for the following specific reasons:

- (1) To provide protection during short circuit conditions for small size conductors (wire of cross-sectional area less than No. 20 AWG).
- (2) To provide protection during short circuit conditions against bulbs rupturing and causing ignition of surrounding materials (one or more bulbs in the shorted circuit).
- (3) To provide protection against melting lampholder materials in order to pass the Cascade Failure Simulation Test (§ 1208.29). The overcurrent protective device may be relied upon to provide protection when the current increases due to lamp filament burnouts, the burned out lamps passing current through the shunt feature within the miniature lamps.
- (4) To meet a qualification for Class Y use of an insulating material (referred to as "close fusing") as described in § 1208.5.

The proposal, at § 1208.8(b) establishes the method for rating an overcurrent protective device. The rated

value is one-half of that which causes the device to open within 2 minutes when operated at room temperature. It may be necessary to determine that the rating of an overcurrent protective device is 300 milliamperes or less in connection with § 1208.5(a)(2), or 3 amperes or less in connection with § 1208.6(e).

The proposal, at § 1208.8(c) requires that live parts of a fuse or fuseholder not be accessible when tested by the accessibility probe (Figure 1). This requirement has been included since replaceable fuses could present a shock hazard if a person were able to contact live parts during removal and replacement of a fuse from its holder.

The recommended standard submitted by NCL assigned insulation materials used for overcurrent protection devices and their holders to Class Z, with the exception of special fuse-lamp devices and their holders. In the proposed standard at § 1208.8(d) the Commission has removed this exception and requires overcurrent protection device enclosures or holders to be Class Z materials as provided in § 1208.5(a)(3) (that is flame retardant materials) for all types and locations of the protective device. This requirement has been included since a fault that results in shorting of live parts on the supply side of any overcurrent device could cause ignition of flammable insulating materials. The overcurrent device only provides protection against faults which result in current going through the device element and would not provide protection against faults which do not send current through the overcurrent protection element. If special fuse lamp devices and their holders were exempt, a fault that results in shorting of live parts on the supply side of the device or holder could cause ignition of flammable insulating materials.

The proposal does not restrict the form of an overcurrent protective component. An overcurrent protective device may take the form of a special lamp that also provides fusing. Such a device should be provided with a holder which does not permit the entry of non-fuse type ordinary lamps from the string, so that the purpose of the special lamp is not defeated. This is required in § 1208.8(e).

If fuses of the string are replaceable, at least one spare fuse, of the original fuse type, must be provided in accordance with § 1208.8(f). This requirement reduces the likelihood that a consumer will attempt to defeat this important protective component by bypassing or shorting the fuse where a replacement is not readily at hand.

Section 1208.8(g) of the proposal requires overcurrent protective devices to pass each of the following tests as applicable: Temperature Test for Plugs, Connectors and Fuseholders

(1208.30), Flammability Test for Class Z Applications (1208.27), Strain Relief Test for Lampholders, Fuseholders and Other Bodies Except Plugs and Connectors (1208.23) and Crush Test for Lampholders and Fuseholders (Other Than Types Which Are Incorporated in Plugs and Connectors) (1208.26).

LAMPS AND LAMP HOLDERS (1208.9)

The proposal, at § 1208.9(a), requires that lampholders must provide a spacing of not less than 0.030 inch (0.76 mm) through air and over surfaces between electrically live parts of differing electrical potential, and between electrically live parts and dead metal parts. Spacings less than the required amount result in designs wherein lampholder contacts could readily be bridged resulting in shorting conditions that could lead to overcurrent, heating, melting, fire and exposure of live parts. The proposal also requires that live parts of lampholders be recessed at least 0.20 inch from the lamp entry end of the lampholder. This minimum dimension is based on a requirement in the NOEL Standard; it is intended to isolate lampholder contacts so that the likelihood of having exposed lamp contacts (particularly extra-long lamp leads of push-in replacement lamps) when lamps are energized is reduced. In addition, the proposal at § 1208.9(b) requires that no live parts of either the lamps or lampholders be accessible before, during, or after insertion of a bulb. The purpose of this requirement is to protect live parts against accidental contact by persons. The Commission believes the opening in lampholders for inserting lamps must not permit live parts to be readily accessible to contact by a probe, especially since the lights are decorative attractions for children. As a result of the relatively small size of lamps, it is difficult to hold a lamp or lampholder and remain away from the electrical contacts. Therefore, no live parts of either the lamps or lampholders must be accessible before, during, or after insertion of a bulb.

Section 1208.9(c) refers to the Dielectric Test for Lampholders and Lamps (1208.25). As previously noted in the discussion of Materials (§ 1208.5), the Dielectric Test for Lampholder and Lamp Assembly is a measure of the insulating quality of the lampholder and lamp insulating materials. In addition, it is a check to assure adequate separation of opposite polarity live parts within the lampholder and lamp assembly to prevent shorting conditions that could ultimately lead to fire or exposure of live parts if the basic designs were inadequate.

Sections 1208.9 (d), (e), and (f) refer to performance tests (1208.26, 1208.24, 1208.23) for lampholders and lamp assemblies. See the discussion of the

tests in this preamble for additional information regarding these requirements.

At § 1208.9(g), the proposal requires that each miniature Christmas tree light must have lamps that are intended to operate at the same voltage. The purpose of this requirement is to avoid dangerously overheating lampholders. This condition results when lamps for use at one particular voltage are accidentally inserted into lampholders in circuits designed for lamps that operate at a different voltage.

The proposal, at § 1208.9(h) provides that lamps that have shunts must not be used in series circuits having fewer than 10 lamps or lampholders. Series circuits of lamps with fewer than 10 lamps are intended to operate at voltages in excess of 12 volts. If lamps with shunts were used and a lamp with a shunt had the filament burn out, the shunt would bypass the open filament to keep the remaining lamps lit. This condition would subject remaining lamps to significant overvoltage conditions which could lead to dangerous overheating, melting of materials and other degradations of the string.

The proposal, at § 1208.9(i) refers to the Decorative Part Downward Burning Rate Test (1208.37) which requires that all lampholder and lamp assembly materials meet the minimum burning rate. This is to ensure that these materials are not highly flammable.

The proposed standard at § 1208.9(1) includes a requirement to eliminate lamp bulbs that could generate extremely high surface temperatures (approaching the self-ignition temperatures of materials that may be used in and around Christmas tree lights) either when lamp bulbs are incorrectly used in light sets not designed for them, or when overcurrent conditions are present but there is not enough current to open the lamp filament or any overcurrent protective device provided. Although this provision was not included in the recommended standard submitted by the offeror, the Commission believes that it is necessary in order to ensure that fires do not result from using lamp bulbs that generate extremely high surface temperatures.

The proposed standard, at § 1208.9(m), requires lamps and lampholders to pass each of the following tests: The Cascade Failure Simulation Test (1208.29); the Short Circuit Simulation Test (1208.28); the Heating Test for Lamps and Lampholders (1208.38); the Millivolts Drop Test for Lampholders (1208.39); the Strain Relief Test for Lampholders and Fuseholders (and other bodies except plugs and connectors) (1208.23); the Secureness of Lampholder Contacts Test (1208.24); the Crush Test for Lampholders and Fuseholders (Other than

types which are incorporated in plugs and connectors) (1208.26); the Dielectric Test for Lampholders and Lamp Assembly (1208.25); the Flammability Test for Class Z Applications (Except Wire) (1208.27); the Maximum Wattage Test for Lamps (1208.40); and the Decorative Part Downward Burning Rate Test (1208.37).

As a result of additional research and testing conducted by the National Bureau of Standards (NBS) for the Commission after the submission of the recommended standard, the Commission has added additional requirements to the section of the proposal concerning lamps and lampholders (§ 1208.9). The offeror's recommended standard provided that lamps and lampholders must meet the Cascade Failure Simulation (CFS) Test (at 1208.29), which is a test intended to simulate the hazardous conditions which could occur during normal and failure operating modes of miniature Christmas tree lights.

The purpose of the Cascade Failure Simulation Test is to determine whether the lamp circuit is sufficiently protected against lampholder melting and subsequent exposure of live parts from overcurrent in the lamp circuit as bulbs burn out. However, laboratory tests at NBS have indicated that melting of certain lampholders can occur either from conditions that do not result in overcurrent or that result in overcurrent that is not sufficient to blow even a fuse that is rated at or slightly above the normal circuit current.

The original CFS Test in the recommended standard submitted by the offeror did not address the following credible hazard conditions of an operating light string where temperatures could be high enough to melt certain materials but where overcurrent conditions are not significant:

(1) Improper insertion of a lamp or lamps not designed for the light string under observation (e.g., substitutions of bulbs intended for a 10 lamp light string as replacement for burned out bulbs in a 35 or 50 lamp light string) can present a hazard without an overcurrent condition if a high voltage bulb designed for a 10 lamp circuit is inserted into a 35 or 50 lamp circuit. The 35 or 50 lamp circuit, which operates at higher currents (130 ma-150 ma) than the 10 lamp circuit (100 ma), will force higher current through the high voltage lamp. This will cause the lamp to burn hotter than normal. Although there are no significant overcurrent conditions present, the hot lamp bulb could melt its own socket or another lampholder if direct contact is made. The hot lamp could also ignite external materials.

(2) Lamps bunched together for a unique decorative effect can present a hazard without an overcurrent condi-

tion. This arrangement can result in lampholder melting and later exposure of conductors without an overcurrent condition being present.

(3) Placement of decorative attachments over the lamp assembly can result in melting and exposure of conductors without an overcurrent condition being present.

(4) Variability of contact resistance at the wire-to-lampholder connection within some types of lampholders can present a hazard without an overcurrent condition. The CFS Test does not adequately test this condition because of the variability of contact resistance with contact pressure and the relatively long period of time the condition can be present before a hazardous condition materializes.

(5) Defective lamps that run hot or shunts that do not open can result in melting and exposure of conductors without an overcurrent condition being present.

In order to address these hazard areas that are not included in the original CFS test, the Commission has both modified the CFS Test, at § 1208.29 and included three additional test requirements in the proposal, at § 1208.9 (j), (k), and (l). These tests are § 1208.38, Heating Test for Lamps and Lampholders, § 1208.39, Millivolt Drop Test for Lampholders, and § 1208.40, Maximum Wattage Test for Lamps. The CFT Test cannot readily be modified to simulate those hazardous situations resulting from usage of parts not designed for the light string or from events which may require a long period of time to become apparent; hence, there is a need for a minimum component performance level as provided by these tests. These modifications to the CFS Test and additional tests are intended to reveal hazardous conditions that may be present in the absence of a significant overcurrent condition. The Heating Test for Lamps and Lampholders requires lampholder assemblies to withstand a temperature of 248° F (120° C) for 2 hours without exposing conductors. The Millivolts Drop Test for Lampholders has been included to evaluate the integrity of wire to lampholder connections and to address overheating hazards presented by contact resistance within some types of lampholders. The Maximum Wattage Test for Lamps has been included to address the hazard of bulb surface temperatures which can exceed the self-ignition point of materials used on and around Christmas trees.

PACKAGING AND LABELING (1208.10)

The proposed standard, at § 1208.10, includes packaging and labeling requirements. The packaging and labeling requirements address the shock hazards which can be caused by direct contact with exposed live electrical

conductors or by contact with an intervening conductive object. The requirements also address the fire hazards which can be caused by excessive heating of flammable materials.

After reviewing the NCL Review Panel recommendations, the Commission concluded that guidelines are necessary to ensure that the placement, type size, and prominence of the requisite labeling statements would make them conspicuous to the consumer. Because of the similarities between the labeling presently required for hazardous substances under the Federal Hazardous Substances Act (FHSA) and that required by this proposal, the proposed standard, at §1208.10, provides that 16 CFR 1500.121, governing the prominence and conspicuousness of FHSA labeling, may be used as guidance for the labeling required by this section.

The proposal would require that miniature Christmas tree lights have a label containing cautionary information permanently affixed to the light string and located between the plug and the first lampholder. A permanent label is necessary since the fire and shock hazards addressed by the labeling could occur throughout the life of the product. The location of the label (between the plug and the first lampholder) is necessary since the consumer is likely to handle the product at this point when the product is used, and thus is likely to read the label if it is placed in this location.

The proposal would require that the permanently affixed label and the package have the signal word "Caution" or "Warning" as well as the statement of hazard "to avoid fire or shock hazards". The signal word is necessary to draw attention to the cautionary information on the label. The statement of hazard is necessary to state the purpose of the cautionary information.

The proposal would also require the following cautionary information: "Do not use on trees with metal or metallic needles, leaves or branch covering."

"Do not use staples or sharp-edge fasteners which can damage insulation."

"Use only decorations over lamps if provided with light set."

Metallic trees pose a potential shock hazard or fire hazard resulting from shorting if metal needles or other such conductive parts of trees penetrate the insulation of the light string as it is being installed on the tree, or work their way into bulb sockets or other openings in the string's insulation so as to contact live conductor parts.

Similarly, staples or sharp-edged fasteners may expose the user to electric shock or fire resulting from shorting if the fasteners contact live parts of the light string by penetration of the insulation as they are installed.

Attaching decorations to the bulbs, unless they are specifically designed to eliminate any potential hazard when employed with a particular pattern of light string, can pose a potential shock hazard when metallic parts of the decoration are pushed down into the bulb socket or are pushed through the insulation so as to contact live parts of the string. In addition, potential fire hazards occur if combustible or non-fire retardant materials present in the decoration are overheated by the bulb, and if the decoration overheats the lampholder.

The proposal would also require the permanently affixed label and the package to contain the complete name and mailing address of the domestic manufacturer, domestic importer, distributor, or private brand seller and the manufacturer's identification number (which may be in code), indicating the style number or name, the lot number, and the year of manufacture. This information is necessary in order to allow the Commission and consumers to identify the manufacturer and the product.

The proposal would require lamp and fuse replacement information on the permanent string label and package. The proposal would also require voltage and manufacturer information on the packet of spare bulbs if provided. Replacement information is necessary since installation of bulbs intended for use in light strings with a greater or smaller number of series bulbs than the string in which the bulb burn out has occurred will result in overheating, thus increasing the likelihood of fire hazard. Therefore, bulb replacement information for the string is required on the permanent string label. Since present day technology does not provide an economical, acceptable means to mark the voltage rating directly on the miniature light bulbs, voltage-rating information is required on the container of spare replacement bulbs to try to forestall installation of these bulbs in an inappropriate string, thus increasing the possibility of fire. In addition to the voltage rating of the bulbs, the spare-bulb container carries a manufacturer-identification to provide traceability of the manufacturer in case of safety or other problems with the bulbs.

Fuse replacement information is required for replaceable fuses since this information is necessary to ensure the continued effectiveness of this over-current protective device.

The offeror recommended that the Commission require the inclusion of the Commission's Hot Line number (a toll free number established to receive consumer complaints about product hazards and disseminate information about product safety) on the permanently attached label. The Commission has not included this provision in

the proposed standard since inclusion of the number could lead to many calls unrelated to safety, such as calls concerning broken or burned out bulbs. This practice could also overburden the Commission's small hotline staff.

The Commission believes that the labeling included in this section also constitutes performance and technical data authorized by Section 27(e) of the Consumer Product Safety Act (15 U.S.C. 2076(e)). Consequently, the Commission is also relying on this section as authority for these requirements.

The Commission is publishing with the proposed standard at §1208.53 of Subpart C labeling recommendations concerning care and use instructions. While the labeling provisions of this section are not requirements of the standard, the Commission encourages manufacturers to follow these recommendations.

TESTS

The proposed standard, at Subpart B, includes tests applicable to miniature Christmas tree lights. These tests have been included in order to allow the Commission to test for compliance purposes. A brief summary of these tests is provided below. Failure to meet the performance requirements can generally result in exposure of live parts and short circuit conditions, or other conditions which are further explained below in connection with each test.

WIRE INSULATION RESISTANCE (1208.13)

The purpose of this test is to ensure that the material covering the wire conductor will provide adequate insulation. The test is widely applied to appliance wiring insulating materials.

WIRE INSULATION ELONGATION AND TENSILE STRENGTH (1208.14)

The purpose of this test is to evaluate the characteristics of the wire insulation by performing comparative strength tests before and after accelerated aging of specimens. This test has been widely applied to thermoplastic insulation which has polyvinyl chloride as the basic constituent.

HEAT-SHOCK TEST FOR WIRE INSULATION (1208.15)

The purpose of this test is to evaluate the behavior of wire insulation in terms of whether it will crack should it come in contact with hot surfaces up to 121° C for up to one hour.

DEFORMATION TEST (1208.16)

The purpose of this test is to evaluate the flow characteristics of wire insulation under mechanical pressure when it undergoes a rise in temperature.

COLD-BEND TEST (1208.17)

The purpose of this test is to evaluate the bendability of the wire insulation without cracking while being subjected to the coldest outdoor conditions likely to be encountered.

WEATHERING TEST (1208.18)

The purpose of this test is to evaluate the wire insulation for strength and aging after exposure to simulated rain and sun (ultra-violet light) conditions.

The proposed standard includes a weathering test for wire insulation in which specimens of wire are exposed in a xenon arc Weather-Ometer for a period of 1248 hours. Use of the xenon arc Weather-Ometer as opposed to other Weather-Ometers is proposed because the spectrum of radiation achievable with a xenon arc device more closely approximates the spectrum of solar radiation than do the spectra of other Weather-Ometers. Therefore, the xenon arc device has the potential for providing a fairer, more universal and more representative test than do the other available devices.

DIELECTRIC TEST FOR WIRE INSULATION (1208.19)

The purpose of this test is to locate any defects in the completeness of the insulation by placing a high voltage between the outer surface of the wire insulation and the wire conductor.

ABRASION TEST FOR WIRE INSULATION (1208.20)

The purpose of this test is to evaluate the wear characteristics of the wire insulation.

FLAMMABILITY TEST FOR WIRE INSULATION (1208.21)

The purpose of this test is to evaluate the horizontal burning rate of the finished insulation. The test requires that slow burning wire be used.

FLEXING TEST FOR WIRE (1208.22)

The purpose of this test is to evaluate the mechanical flexing characteristics of the wire. The test requires that the stranding of the conductors resist breakage as a result of flexing which is likely to be encountered while in service.

STRAIN RELIEF TEST FOR LAMPHOLDERS, FUSEHOLDER AND COMPONENT BODIES OTHER THAN PLUGS AND CONNECTORS (1208.23)

The purpose of this test is to evaluate the secureness of the attachment of wires to the component bodies of a string (other than the plugs and connectors). The test includes wire-to-wire pulls and wire-to-component pulls.

SECURENESS OF LAMPHOLDER CONTACTS (1208.24)

The purpose of this test is to evaluate the secureness of the lampholder electrical contacts to resist mechanical forces which tend to lift them out from the lampholder upon removal of a lamp or upon pushing the wires where the wires enter the lampholder.

DIELECTRIC TEST FOR LAMPHOLDER AND LAMP ASSEMBLY (1208.25)

The purpose of this test is to evaluate the separation of lampholder and lamp contacts by applying a 1250 volt potential across the contacts. If not adequately separated, bulbs could short out and result in overheating other components.

CRUSH TEST FOR LAMPHOLDERS AND FUSEHOLDERS (1208.26)

The purpose of this test is to evaluate the strength of the component bodies to resist breakage which could expose live parts or short circuit. The 16 pound force value represents a maximum thumb and forefinger pressure of the 95th percentile adult male as defined by Dreyfus in "The Measure of Man".

FLAMMABILITY TEST FOR CLASS Z APPLICATIONS (EXCEPT WIRE) (1208.27)

This test evaluates the flame retardant characteristics of materials and is based on that contained in Underwriters Laboratories Standard UL 94 for 94 VO rated materials.

SHORT CIRCUIT SIMULATION TEST (1208.28)

The purpose of this test is to evaluate the overcurrent protective device in terms of its ability to interrupt circuits having the short circuit current capacity likely to be encountered in the field without causing hazardous situations such as ignition of materials in proximity to the device. The test also determines whether the protective device will operate to prevent a lamp(s) from rupturing and igniting combustible surroundings when a short in the wiring occurs with one or more lamps in the shorted circuit.

CASCADE FAILURE SIMULATION TEST (1208.29)

The purpose of this test is to simulate the overcurrent conditions which could occur during the normal and failure operating modes of the miniature light string or decorations when lamp filaments burn out and the circuit current increases due to operation of the shunt feature contained within the lamps. With the Commission modification, the test is also intended to uncover hazardous situations resulting from the accidental contact between a lamp and another lampholder, and from the bunching of the lamps

together for unique decorative effect. The test is intended to uncover conditions where bare conductors or ignition hazards might result from lampholder melt down.

TEMPERATURE TEST FOR PLUGS, CONNECTORS, AND FUSEHOLDERS (1208.30)

Under maximum current conditions, the conductors of plugs, connectors and fuseholders should not result in temperature rises that indicate relatively high resistance paths. The purpose of this test is to evaluate the adequacy of the conductors in terms of size, conductivity, and contact resistance. The test also evaluates connectors in terms of the adequacy of the receptacle contacts to resist burning or pitting.

RECEPTACLE INSERTION-WITHDRAWAL TESTS (1208.31)

The purpose of this test is to evaluate the characteristics of receptacles for retaining the blades of attachment plugs and add-on connectors.

PLUG AND CONNECTOR BLADE PULL TEST (1208.32)

The purpose of this test is to evaluate the security of the blades within the body of the plug or connector to resist pull forces. If a blade is displaced or dislodged it could expose live parts to contact by persons.

PLUG AND CONNECTOR BLADE PUSH TEST (1208.33)

The purpose of this test is to evaluate the integrity of the blades within the body of the plug or connector to resist push forces. A test failure occurs if a blade is displaced or the enclosure opened to expose live parts.

CRUSH TEST FOR PLUGS AND CONNECTORS (1208.34)

This test evaluates the ability of the plug and connector bodies to resist breakage which could expose live parts or short circuit. The 75 pound force represents the crushing force under foot and is derived from a crush test in Underwriters Laboratories Standard UL 498.

STRAIN RELIEF TEST FOR PLUGS AND CONNECTOR CONNECTIONS (1208.35)

The purpose of this test is to evaluate the attachment of the wires to the plugs and connectors to resist pull forces that could expose live parts.

SECURITY OF INSULATION AT PLUGS AND CONNECTORS TEST (1208.36)

The purpose of this test is to evaluate whether insulation can slip away from the conductors of wire when pulled. If this condition exists, live parts could be exposed.

DECORATIVE PART DOWNWARD BURNING RATE TEST (1208.37)

The purpose of this test is to evaluate whether materials are relatively slow burning. All materials used on miniature Christmas tree lights and decorations should, as an absolute minimum, meet the burning rate requirements of this test. The test does not rule out most paper, flock, fiber, plastic and other materials unless they are very flammable.

HEATING TEST FOR LAMPS AND LAMP HOLDERS (1208.38)

The purpose of this test is to simulate additional credible failure modes that cannot be determined by using the Cascade Failure Simulation Test. The temperature of 248° F (120° C) is the minimum for lamp bases and lamp holders to withstand. The heat can be generated under conditions including: (a) Placing over the lamp assembly a decorative attachment not supplied with the lighting unit, (b) defective lamps that run abnormally hot, and (c) incorrect replacement of lamps into the light string by consumers that result in high-heat conditions. The two hour period allows for a full thermal soaking so that the ultimate effects on materials will become apparent.

MILLIVOLTS DROP TEST FOR LAMP HOLDERS (1208.39)

The purpose of this test is to evaluate the electrical integrity of the wire-to-lamp holder connections to ensure that relatively low-resistance connections are used which will not add excessive heat to the lamp/lamp holder assembly.

MAXIMUM WATTAGE TEST FOR LAMPS (1208.40)

The purpose of this test is to eliminate lamp bulbs that could generate extremely high surface temperatures (approaching the self-ignition temperature of materials used in and around Christmas tree lights). While this test is not expected to affect most presently known bulb designs, it is an important limitation to prevent future designs which could present a hazard when used as replacement bulbs in miniature Christmas tree lights.

CONDUCTIVE TINSEL TEST (1208.41)

The purpose of this test is to protect consumers against electric shock when they contact metallized tinsel and other conductive strips and threads near string components.

C. RECOMMENDATIONS (SUBPART C)

The Commission is publishing with the proposed standard several recommendations concerning miniature Christmas tree lights. Although these recommendations at Subpart C are not

part of the proposed standard and would not, if published by the Commission with any final standard, be binding, the Commission believes that these recommendations are in the public interest and could improve the safety of the product. The Commission encourages manufacturers to follow these recommendations in making miniature Christmas tree lights.

At § 1208.50 the Commission recommends that materials be used which are appropriate to the functions of the parts they comprise. Although this provision is of a generalized nature, it has been included as a recommendation in order to further emphasize to manufacturers the importance of using the proper materials for miniature Christmas tree lights.

At § 1208.51, the proposal includes general recommendations to protect against corrosion of parts of the lights that enclose, or support or secure enclosures of electrically energized parts. The section recommends that parts be of stainless steel, or plated or coated iron or steel. Corrosion or rust of these parts could lead to failure of the part, resulting in exposure of live metal parts.

At § 1208.52 the proposal includes recommendations that address the mouthburn and other electrical shock hazards that plugs and connectors present to children. These recommendations are based on the provisions in the Underwriters Laboratories (UL) Standard for Cord Sets and Power Supply Cords (UL 817 A). The extension cord provisions have been included as recommendations for miniature Christmas tree lights since the potential hazards from fire and shock with extension cords are also present in miniature Christmas tree lights. The Commission believes that plugs and receptacles on miniature Christmas tree lights may be at least as inviting to small children as they are on extension cords. The CPSC has decided that a mandatory standard is not necessary at this time to address the mouthburn and shock hazards associated with extension and power supply cords since the provisions of the UL Standard (UL 817 A) appear to be adequate. The Commission believes that the recommendations at Section 1208.52, which are similar to provisions in the existing voluntary standard (UL 817 A) would, if followed, adequately address the mouthburn and shock hazards associated with miniature Christmas tree lights. The Commission does not at this time believe that it is necessary to include these provisions as requirements. However, if the Commission receives information indicating that mouthburns and electric shocks to children are occurring in spite of these recommendations because of a failure to follow them, the Commission would

consider amending the standard to include these provisions as requirements.

The recommendation for faces of attachment plugs and add-on connectors at § 1208.52(a) is intended to provide greater distances between the blades and the surfaces likely to be contacted by the small fingers of children. At § 1208.52(b) the Commission recommends that plug bodies provide a finger grip or finger gripping area to reduce the likelihood that a plug can be gripped at the periphery of the face where the blades project. If plugs are gripped at this point, contact with the live blades may result. The Commission also recommends that wires not project from the plug or add-on connector in the finger grip, so that wires are not damaged when the plug is gripped.

At § 1208.52(c) the proposal recommends that live parts within receptacle openings be recessed at least ¼ inch (6.35mm) from the receptacle face. This distance would ensure a separation to prevent bridging by saliva, where children place the receptacle in their mouth.

At § 1208.52(d) the proposal recommends that all receptacle openings be reliably and effectively closed with insulating material. The purpose of this recommendation is to provide additional precautions against contact and bridging by saliva of children with live parts within receptacle openings. This recommendation is generally consistent with provisions in the UL Standard for extension cord sets. This recommendation differs from the UL provision since it includes all receptacle openings, whereas the UL extension cord set standard permits one receptacle to remain open. This difference is based on the fact that extension cord sets are generally only energized when at least one receptacle is used, so that one receptacle could remain with a closure. By contrast, Christmas tree lights are often operated when no receptacles are used, so that all receptacles should be closed.

The Commission is publishing with the proposed standard labeling recommendations at § 1208.53 of Subpart C. These labeling recommendations involve care and use instructions, including instructions for testing and inspecting the light strings before use, instructions for the proper replacement of bulbs and fused instructions for proper storage, special precautions for outdoor use, a cautionary message to keep young children away from light strings and bulbs, and (if the light string has a separate and connector receptacle) a statement indicating that only other miniature lights or decorations with miniature lights should be attached to the receptacle.

The Commission encourages interested persons to comment on the rec-

ommendations that have been included at Subpart C of this proposal.

D. OTHER CONSIDERATIONS

Findings. Section 9(c) of the act requires that prior to promulgating a consumer product safety rule the Commission shall consider and make appropriate findings as to:

(1) The degree and nature of the risk of injury which the rule is designed to eliminate or reduce;

(2) The approximate number of consumer products, or types or classes thereof, subject to such rule;

(3) The need of the public for the consumer products subject to such rule, and the probable effect of such rule upon the utility, cost, or availability of such products to meet such need;

(4) Any means of achieving the effect of the rule while minimizing adverse effects on competition or disruption or dislocation of manufacturing and other commercial practices consistent with the public health and safety;

(5) That the rule (including its effective date) is reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with miniature Christmas tree lights and similar miniature decorative lights; and

(6) That promulgation of the rule is in the public interest (15 U.S.C. 2058(b) and (c)).

The Commission must also include these findings in the final rule.

Section 9(b) of the act (15 U.S.C. 2058(b)) requires that in promulgating a consumer product safety rule, the Commission shall also consider and take into account the special needs of elderly and handicapped persons to determine the extent to which such persons may be adversely affected by the rule.

The Commission welcomes comments from interested parties relating to all aspects of the subject matter of these findings.

THE DEGREE AND NATURE OF THE RISK OF INJURY THE RULE IS DESIGNED TO ELIMINATE OR REDUCE

The proposed standard is intended to reduce electrical fire and shock hazards associated with miniature Christmas tree lights. Based on the CPSC 1975 Christmas Decorative Light Survey, the Commission's technical analyses of hazards associated with miniature Christmas tree lights (Engineering Analysis of Miniature Christmas Tree Lights—December 20, 1976), and also on information about injuries associated with this product, the Commission has determined that potentially fatal fire and electrical shock hazards may result from using these products. The Commission has preliminarily determined that miniature Christmas tree lights present an unreasonable risk of injury. Technical analysis

of hazards associated with miniature Christmas tree lights by the Commission staff indicates that shock hazards can be caused by direct contact with exposed live electrical conductors or by contact with an intervening conductive objective (such as a metallic tree ornament or accessory) that is in contact with the exposed conductor. The following are examples of characteristics of these lights which can create shock hazards: Bare wire where the wire enters the lampholders or plugs; plug and receptacle fittings that readily come apart; exposed lamp leads; cracked lampholders; and lampholders contacts which come out when the bulb is removed, thereby exposing the live contacts. Fire hazards can result from certain characteristics of light strings that may allow an exposed conductor to short to a grounded object, causing arcing or excessive heating of flammable materials. The conductor can be exposed from bare wire at the entrance to lampholders of plugs, exposed lamp leads, cracked lampholders, or lampholders contacts that come out when the bulb is removed. Fire hazards can result from easily flammable grades of thermoplastic material heated by excessive current flow or arcing. In addition, fire hazards can also result from the use of wire without proper overcurrent protection.

Approximately 20 percent of the incidents associated with miniature Christmas tree lights reported during the 1977 Christmas season involved fire; 70 per cent involved smoking, overheating or melting without evidence of actual ignition; and 10 percent involved reports of exposed current-carrying wires.

From 1974-1976, a total of 183 incidents involving Christmas tree lights were reported to the Commission from all sources, including in-depth investigations, consumer complaints received by the Commission and newspaper clippings provided by various clipping services available to the Commission. In about 40 percent of these incidents miniature Christmas tree lights were identified as the product. In about 20 percent of the incidents, larger size light strings were identified as the product. In the other 40 percent of the incidents, the product was identified only as "Christmas tree lights." Fifty of the incidents resulted in personal injury. The primary hazard was fire. More than two thirds of the injuries were burns, either from direct contact with a burning light string or as a result of an extensive fire. Twelve of the 50 injuries were definitely attributed to miniature Christmas tree lights. Eleven of the injuries were definitely attributed to larger size strings. The remaining 27 injuries could not be attributed to a light string of a definite size. In many cases where there

was extensive fire damage, the kind of light string involved could not be identified.

The Commission has received several newspaper clippings reporting fires known or suspected to involve Christmas lights that occurred during the 1977 Christmas season. Most of these fires involved extensive property damage.

Economic analysis. The Commission has considered the potential economic effects of this proposed standard on the industry and on consumers, including possible changes in the production cost and retail price of some lighting units and effects on the utility and availability of miniature Christmas tree lights. The National Consumers League submitted with its recommended standard an economic analysis report which provides a substantial amount of information about the potential impact of this proposed standard, which is similar in most respects to NCL's recommended standard. The Commission believes that the conclusions of the report are generally applicable to this proposal. Their analysis estimates that some 30 to 40 million miniature Christmas tree lights and similar miniature decorative lights produced each year are potentially subject to a standard, and that the provisions of the submitted standard would probably lead to an increase in the average total cost of manufacturing miniature Christmas lights of approximately 8 to 12 percent. This may result in an increase in the retail price of some sets. It is expected that necessary changes to lights can be made within the limits of existing manufacturing practices and technology. The cost increase may be smaller for products now conforming to the Underwriters Laboratories' voluntary provisions, since the proposal includes many requirements that are similar to the UL provisions. Since the majority of Christmas tree lights are produced in Taiwan and since the Taiwan government has decided to require that all Christmas lights exported to the United States be UL listed after July 31, 1978, the economic effect of the standard may be minimized.

Changes and additions to the NCL recommended standard made by the Commission may add further to the estimated increases in production costs and retail prices and may affect the availability of certain kinds of products. The addition of the heating test for lamps and lampholders (1208.38), for example, may result in the discontinuation of the use of low-density polyethylene as a lampholder material. Some models of strings, particularly those with certain 12 volt lamps, may no longer be available as a result of changes made to the Cascade Failure Simulation Test (1208.29). Certain models of lamps such as ballast lamps

or twinkle lamp designs may no longer be available as a result of the maximum wattage test for lampholders (1208.40).

An economic analysis report on the proposal will be made available for interested persons to comment on before the Commission decides whether to issue a final standard. This report will also treat the economic issues associated with product testing and any certification rule the Commission may propose.

The Commission has considered available information concerning the degree and nature of the risk of injury summarized above from the CPSC 1975 Christmas Decorative Light Survey, the Commission's technical analyses of hazards associated with miniature Christmas tree lights, and information about injuries associated with this product. The Commission has also considered presently available information concerning the potential economic effect of this proposed standard on industry and on consumers. The Commission will make available for public comment any additional economic information and analysis that is relevant and relied upon in the final standard. At the present time the Commission believes that the potential benefits associated with the proposed standard appear to outweigh the effect of the proposed rule on the cost, utility, and availability of the product. The Commission preliminarily determines that miniature Christmas tree lights and similar miniature decorative lights present an unreasonable risk of injury from electric shock and fire.

E. STOCKPILING

The Commission has not included an antistockpiling provision in the proposed standard since, as a result of the nature of the miniature Christmas tree light industry, the Commission does not believe that such a provision is necessary to prevent the intentional buildup of noncomplying inventories. For most firms, a substantial and costly deviation from normal production, and distribution practices and shipping schedules would have to be made in order to have non-complying merchandise in the U.S. before the effective date. The Commission believes that most firms will not have sufficient economic incentive to make these changes. If the Commission later determines that an antistockpiling provision is necessary, the Commission will issue such a rule.

F. ENVIRONMENTAL CONSIDERATIONS

The Commission has conducted an environmental assessment of the regulatory alternatives concerning miniature Christmas tree lights, addressing the potential effects of action on the production, distribution, consumption,

and disposal of products subject to the standard. The effects of these alternatives will not lead to any significant impact on air and water quality, solid waste disposal, land use, energy use, or any other aspect of the physical environment. Since the proposed standard would not have a significant adverse effect on the quality of the human environment, an Environmental Impact Statement is not required. A copy of the environmental assessment may be seen in, or obtained from, the Office of the Secretary.

G. EFFECTIVE DATE

The Commission is proposing that the standard become effective on December 1, 1979. Miniature Christmas tree lights that are manufactured after the effective date of this standard must meet its requirements if the product is manufactured for sale, offered for sale, or distributed in commerce within the United States or if the product is imported into the United States.

The Commission is interested in implementing the standard in the shortest period of time consistent with the need to protect the public that will not create major market disruptions. Since many of the provisions in the proposed standard are currently being met by manufacturers, the Commission believes that the proposed effective date is consistent with the need to protect the public. In proposing this effective date, the Commission has taken into consideration the nature of the overseas production cycle for this product, since most of the light strings are manufactured abroad. Information presently available to the Commission indicates that the foreign manufacturing cycle, including raw material or component part acquisition, begins as early as fifteen to eighteen months before a given Christmas for some firms.

Assembly of the product for many firms may continue until seven or eight months before Christmas. The Commission believes that the December 1, 1979 effective date is reasonable and necessary to allow all manufacturers to comply with the standard with a minimum amount of disruption to their production cycles and manufacturing practices; products to be sold in the 1979 Christmas season would have been imported by the December 1, 1979 effective date. In addition, the Commission believes that the effective date is reasonable since presently available information indicates that most manufacturers would be able to make any necessary changes in their production process within the period between the anticipated publication of the final standard (March 15, 1979) and the proposed effective date, December 1, 1979. Also, since the foreign manufacturing cycle for the 1980

season would not begin before June 1979 for most firms, the anticipated publication of the final standard should provide most manufacturers with sufficient time to acquire raw materials and component parts for the 1980 Christmas season. If additional data show that it is in the public interest to extend or shorten the proposed effective date, the effective date could be changed. The Commission encourages the submission of data and arguments concerning the most appropriate effective date.

H. CERTIFICATION AND LABELING

Manufacturers and private labelers of miniature Christmas tree lights will be required to comply with the certification provisions of section 14(a)(1) of the act (15 U.S.C. 2063(a)(1)) after the effective date of the miniature Christmas tree light safety standard. Section 14(a)(1) requires manufacturers (and private labelers, if the product bears a private label) to issue a certificate which states that the product conforms to all applicable consumer product safety standard and specifies any applicable standard. The certificate shall be based on a test of each product or upon a reasonable testing program and must state the name of the manufacturer or private label issuing the certificate and include the date and place of manufacture. Section 14(b) provides that, at the option of the person required to certify the product, testing may be conducted by an independent third party qualified to perform such tests or testing programs.

In addition, section 14 (b) and (c) of the act allows, but does not require, the Commission to issue regulations which would (1) prescribe a reasonable testing program, (2) specify which manufacturer shall issue the certificate when a product has more than one "manufacturer," and (3) require labeling of products subject to the safety standards. (Manufacturers of products subject a consumer product safety standard are required to issue a certificate under section 14(a)(1) based on a test of each product or on a reasonable testing program, even if the Commission has not issued regulation section 14 (b) and (c). Specific certification and labeling requirements of the type authorized by section 14 (b) and (c) of the Consumer Product Safety Act are not included in the proposed standard, but the Commission anticipates that they will be developed in the near future. The rule on certification and labeling will be separately proposed for public comment in accordance, with the requirements of the Administrative Procedure Act (5 U.S.C. 553). However, the Commission anticipates at this time that the proposed standard will not be issued in final form until the certification rule is also issued.

Until such time as the Commission proposes a rule on certification, the following is offered as an indication of how the Commission staff believes that the Commission's certification rule should be structured. Interested persons may wish to use this as guidance for the development and conduct of a reasonable testing program and as guidance in commenting on the provisions of the standard itself.

The proposed standard includes many requirements and tests for components at subpart B. The Commission recognizes the impracticability of testing each item of an assembled product against each requirement of the standard. Therefore, the Commission offers the following guidance. The Commission believes that using certain known available materials of given specifications might provide a high degree of assurance that many of the components will meet the general requirements of the standard and will pass the performance tests in subpart B. Examples of such components are wire, fuses, plugs, and connectors. The following performance tests at subpart B of the standard address wire components: 1208.13-22. Plugs and connectors are covered by the following tests: 1208.30-36. Consequently, a manufacturer of a miniature Christmas tree light string should be able to be assured that the light string will meet many of the requirements of the standard, including many of the performance tests in subpart B of the standard, if appropriate component materials are purchased. The Commission believes that certification for miniature Christmas tree lights could in part be based on certification of components by component suppliers. The component supplier would certify the components as meeting the applicable requirements of the standard after an inspection or test of each component or by performance of a reasonable testing program.

The person issuing the certificate of performance for the assembled strings would rely on testing and inspection records from the component supplier as one of the basis for certification that the assembled string meets those requirements of the standard applicable to the certified components.

For some requirements of the standard manufacturers may not have any reasonable assurance that the requirements can be met by design or material choice. Instead, the ability to meet these requirements depends on the quality of workmanship or assembly practices. For these requirements the Commission believes that it will be necessary for the manufacturer to actually test the completed product. This may be necessary in order to ensure compliance with the requirements of the standard applicable to lampholders. As a result of the im-

practicability of testing each product, conformance to the standard may be demonstrated by the use of a lot acceptance sampling plan, where a lot to be inspected or tested is a quantity of production items manufactured during some specified time interval. The quantity of production in the lot or the interval of time of production used to define the lot is left as a choice of the manufacturer, or of the party responsible for issuing the certificate. For example, the manufacturer might choose to inspect or test each day's production of a given model, or each week's; or each month's. As guidance to the manufacturer, if experience has demonstrated that the production items are not highly variable so that requirements can be met with ease, then defining a lot in terms of a large quantity of production is justified and will minimize testing costs. If the production items are variable and, at times may not conform to the requirements, then smaller lot sizes are desirable. By identifying products by lot, on the box, manufacturers may be able to ensure that the Commission will not be forced to take action against a larger quantity of product to protect the consumer against a hazard associated with a particular lot.

The Commission staff is now drafting a proposed certification rule including a reasonable testing program. Although several months may be required before this certification rule could be published as a proposal, the Commission recognizes that the content of the Commission's certification rule and the final form of the standard are interrelated. The Commission does not intend to issue a final standard before the certification rule is issued, so that the effects of the certification rule and the standard on each other can be considered.

Although the Commission does not intend to issue a certification regulation as part of the standard that is being proposed in this notice, the Commission believes that it would be helpful to solicit comments on issues related to this subject so that these comments can be considered in drafting a proposed certification regulation. The following questions are among those that will be considered in the process of issuing a certification regulation.

1. Who should be required to certify? To what extent should component manufacturers be required to certify their components? To what extent should manufacturers be allowed to rely upon the certification of component manufacturers?

2. Concerning the requirement for a "reasonable" testing program:

(a) Should the Commission specify a reasonable testing program? Should compliance with the program be mandatory on those who are required to

issue certificates of compliance? Or should the program be issued as a guideline?

(b) If the Commission does issue a document on reasonable testing, would it be sufficient to specify the levels of quality to be maintained and verified by a reasonable testing program? Or,

(c) Should the Commission prescribe the specific steps required for sampling and testing?

3. What would be the most appropriate and effective testing programs? Is design qualification testing sufficient to demonstrate compliance to the standard? Should production testing by means of inspection and testing of samples from production be a part of a reasonable testing program?

4. Should manufacturers be required to retain the samples that are tested? If so, for how long?

5. What records should be kept of the manufacturer's testing programs, the tests performed, and the test results? How long should such records be maintained?

6. What are the expected cost or other economic effects of practices or procedures manufacturers are likely to demonstrate compliance to testing and certification requirements?

In addressing these questions, commentors should keep in mind the nature of the miniature Christmas tree light industry and the cost and effects of any contemplated testing program.

Comments that solely concern certification issues will not be addressed in the preamble to any final consumer product safety standard for miniature Christmas tree lights that may be issued by the Commission. Rather, these comments will be considered by the Commission prior to proposing a certification regulation. The substantive comments that are received on that proposal will be addressed in the preamble to the final certification regulation when it is issued.

I. EXTENSION OF TIME TO PUBLISH FINAL RULE

Section 9(a)(2) of the CPSA (15 U.S.C. 2058(a)(2)) requires the Commission to publish a notice of proposed rulemaking in the FEDERAL REGISTER and to provide interested persons with an opportunity to participate in the rulemaking through submission of written data, views, or arguments. In addition to these written comments, interested persons must also be given an opportunity for the oral presentation of data, views, or arguments.

Section 9(a)(1) of the CPSA provides that within 60 days after publication of a proposed rule, the Commission shall promulgate a final rule or withdraw the proposal. The Commission may extend the 60-day period for good cause and must publish its reasons for extension in the FEDERAL REGISTER.

The process of issuing a consumer product safety rule or withdrawing the applicable notice of proceeding requires the Commission to consider the substantive comments that are received on the proposal, decide if any changes to the proposed rule are required, make the findings required by section 9 of the act, and prepare an appropriate FEDERAL REGISTER notice. In the case of the proposed standard for miniature Christmas tree lights the Commission intends to issue a certification rule under section 14(b) of the act along with a final standard. The certification rule must also be proposed for public comment, and the public comments must be considered, before the certification rule can be issued in final form. As a result of these factors the Commission does not believe that a final standard can be issued until March 15, 1979. Accordingly, the Commission hereby extends until March 15, 1979, the date on which it must either publish a consumer product safety rule addressing the risk of injury from fire and shock associated with miniature Christmas tree lights or withdraw by rule the applicable notice of proceeding. This period may be further extended for good cause shown.

CONCLUSION AND PROPOSAL

Having considered NCL's recommended safety standard for miniature Christmas tree lights and the supporting material submitted therewith, together with other relevant information, the Commission concludes that the recommended standard, changed as described above should be proposed as a consumer product safety standard.

Accordingly, pursuant to provisions of the Consumer Product Safety Act (7(f), 27(e), Pub. L. 92-573, 86 Stat. 1215, 1227, 15 U.S.C. 2056(f), 2076(e)), the Commission proposes that title 16, chapter II of the Code of Federal Regulations be amended by adding to subchapter B a new part 1208, as follows:

PART 1208—STANDARD FOR MINIATURE CHRISTMAS TREE LIGHTS AND SIMILAR MINIATURE DECORATIVE LIGHTS

Subpart A—General Requirements of the Standard

Sec.

- 1208.1 Purpose, scope, and application.
- 1208.2 Effective date.
- 1208.3 Definitions.
- 1208.4 Abbreviations.
- 1208.5 Materials.
- 1208.6 Wiring and assembly requirements.
- 1208.7 Component requirements.
- 1208.8 Overcurrent protection.
- 1208.9 Lamps and lampholders.
- 1208.10 Packaging and labeling.

Subpart B—Tests Required by the Standard

- 1208.13 Wire insulation resistance test.
- 1208.14 Wire insulation elongation and tensile strength tests.
- 1208.15 Heat-shock test for wire insulation.

Sec.

- 1208.16 Deformation test for wire insulation.
- 1208.17 Cold-bend test for wire insulation.
- 1208.18 Weathering test for wire insulation.
- 1208.19 Dielectric tests for wire insulation.
- 1208.20 Abrasion test for wire insulation.
- 1208.21 Flammability test for wire insulation.
- 1208.22 Flexing test for wire.
- 1208.23 Strain relief test for lampholders, fuseholders, and other bodies except plugs and connectors.
- 1208.24 Secureness of lampholder contacts test.
- 1208.25 Dielectric test for lampholder and lamp assembly.
- 1208.26 Crush test for lampholders and fuseholders (other than types which are incorporated in plugs and connectors).
- 1208.27 Flammability tests for class Z applications (except wire).
- 1208.28 Short circuit simulation test.
- 1208.29 Cascade failure simulation test.
- 1208.30 Temperature test for plugs, connectors, and fuseholders.
- 1208.31 Receptacle insertion-withdrawal tests.
- 1208.32 Plug and connector blade pull test.
- 1208.33 Plug and connector blade push test.
- 1208.34 Crush test for plugs and connectors.
- 1208.35 Strain relief test for plug and connector connections.
- 1208.36 Security of insulation test at plugs and connectors.
- 1208.37 Decorative part downward burning rate test.
- 1208.38 Heating test for lamps and lampholders.
- 1208.39 Millivolts drop test for lampholders.
- 1208.40 Maximum wattage test for lamps.
- 1208.41 Conductive tensile test.

Subpart C—Recommendations

- 1208.50 General materials.
 - 1208.51 Conductive materials.
 - 1208.52 Plugs and connectors.
 - 1208.53 Recommended labeling.
- AUTHORITY: Sec. 2, 3, 7, 9, 14, 19, 27(e), Pub. L. 92-573, 86 Stat. 1207, 1208, 1212-17, 1220, 1224, 1227 (15 U.S.C. 2051, 2052, 2056, 2058, 2063, 2068, 2076(e)).

Subpart A—General Requirements of the Standard

§ 1208.1 Purpose, scope, and application

(a) *Purpose.* The purpose of this subpart A and subpart B, which together comprise the safety standard for miniature Christmas tree lights and other similar miniature decorative lights, is to set forth requirements to address the hazards of electric shock and fire, which are associated with the use of miniature Christmas tree lights and similar miniature decorative lights, and which may cause injury or death.

(b) *Scope and application.* (1) This part 1208 applies to all miniature Christmas tree lights as defined in § 1208.3(i) that are produced or distributed for sale to or for the personal use, consumption, or enjoyment of consumers in or around a permanent or temporary household or residence, a school, in recreation or otherwise.

This part does not apply to miniature Christmas tree lights that are not customarily produced or distributed for sale to, use or consumption by, or enjoyment of a consumer.

(2) Miniature Christmas tree lights manufactured after the effective date of this standard must meet the requirements of this standard if the miniature Christmas tree light is manufactured for sale, offered for sale, or distributed in commerce within the United States of if the miniature Christmas tree light is imported into the United States.

(3) For enforcement purposes the requirements of this part 1208 are based on the U.S. customary units for measurement, that are given in the part. However, for convenience, the metric (SI) equivalents are also given.

§ 1208.2 Effective date.

This part 1208 becomes effective as to products manufactured after December 1, 1979.

§ 1208.3 Definitions.

For purposes of this part:

(a) "Add-On connector" means a combination attachment plug and receptacle device that may be attached to the electrical conductors of an appliance (including a miniature Christmas tree light), designed to accept the electrical attachment plug(s) of other appliances (including a miniature Christmas tree light), without adding additional current to the wires of the appliance of which it is a part. An add-on connector is also known as a "current tap".

(b) "Attachment plug" means a device attached to electrical conductors of an appliance (including a miniature Christmas tree light), which, by insertion into a receptacle, establishes electrical connection between the appliance and the receptacle conductors. See also the definition of add-on connector.

(c) "Connector" means a receptacle device that may be a part of an appliance (including a miniature Christmas tree light) and is used for the connection of an attachment plug. It may be integral with the plug, in which case it is an add-on connector; or it may be a pendant on the wires, in which case it is an end connector.

(d) "Decorative part" means any attachment to a string that is not a part relied upon for enclosing or supporting electrically live parts.

(e) "End connector" means a receptacle device that is a pendant on the wires and may be used on an appliance including a miniature Christmas tree light for the connection of an attachment plug. Also known as a "cord connector body."

(f) "Lamp base" means the part of an electric light bulb that supports the bulb envelope and separates the elec-

trical contacts that mate with a lampholder. The lamp base may or may not be a permanent part of the bulb envelope.

(g) "Lampholder" means a socket for the insertion of an electric light bulb. A lampholder is attached to the wires of a string.

(h) "Lay" means the distance between the points in which the wire or wire conductor strands complete one cycle of twist.

(i) "Miniature Christmas tree light or similar miniature decorative light" means a lighting unit intended for use with Christmas trees or other decorative applications, which: (1) has lamps or lampholders electrically connected by wires in series or in combinations of series paths, (2) is equipped with or intended to be used with lamps that dissipate 4 watts of power or less per lamp when the product is connected to a 120 volt rms source, and (3) is intended to be supplied electric power from a nominal 120 volt receptacle. Strings of lamps or lampholders which are sold as part of rigid decorations, such as wreaths or frames, are included with this definition. In addition, a lighting unit meeting these requirements would be within the definition even it contains additional electrical elements other than lamps, such as switches, or an additional lamp or lamps with dissipate more than 4 watts of power.

(j) "Overcurrent Protective Device" means a component such as a fuse or circuit protector that opens a circuit when the current becomes excessive.

(k) "Parallel Cord" means distinct wire conductors, with insulation between conductors, formed together in a single un-twisted cable.

(l) "Plug" See the definition of Attachment Plug.

(m) "Pole" means each of two parts of an electrical circuit at which opposite electrical forces are manifested.

(n) "Receptacle" means a contact device for connection of an attachment plug.

(o) "Series Circuit" means the connection of two or more lamps or lampholders in sequence in which one lamp or lampholder is electrically joined to the next such that all the circuit current will flow through each lamp and return to the source, and removal of any lamp would open the circuit and interrupt the current.

(p) "Shunt" means a device within a lamp which is intended to become operative upon failure of the filament. It provides a secondary current path and allows the string to continue to operate.

(q) "Socket"—See the definition of Lampholder.

(r) "String" means lampholders interconnected with wires terminating in an attachment plug or an add-on connector. The string may include other

electrical components and/or decorative parts.

(s) "Wire" means a flexible, insulated electrical conductor.

(t) The definitions in Section 3 of the Consumer Product Safety Act (15 U.S.C. 2052) apply to this Part 1208.

§ 1208.4 Abbreviations.

The following is a list of some abbreviations used in this part.

AWG=American Wire Gauge

°C=Degree Celsius

°F=Degree Fahrenheit

ft=Foot

in=Inch

lbf=Pound Force

m=Meter

mm=Millimeter

N=Newton

rms=Root Mean Square

§ 1208.5 Materials.

(a) *Electrically Insulating Materials.* This subsection provides requirements for insulating materials. Other requirements for these materials are found in §§ 1208.7 and 1208.9. In this subsection, insulating materials are divided into three categories related to the functions of the insulating materials. The following is a description of the three categories and requirements for insulating materials which comprise each category.

(1) Class X—Class X materials do not directly contact, enclose, or support electrically live parts. Class X materials are used as shades, diffusers, reflectors, simulated needles and leaves, and supporting or decorative frames. Materials used for Class X purposes shall pass the Decorative Part Downward Burning Rate Test (1208.37), the Cascade Failure Simulation Test (1208.29), and the Short Circuit Simulation Test (1208.28) of Subpart B of this part.

(2) Class Y—Class Y materials contact or are relied upon to enclose or support electrically live parts whose steady current flow under normal operating conditions is limited by an overcurrent protective device rated at no more than 300 milliamperes. Class Y materials may include materials used as lamp bases, lampholders and certain shades and diffusers that are integrally molded as part of the lamp bases. Materials used for Class Y purposes shall pass the Decorative Part Downward Burning Rate Test (1208.37), the Cascade Failure Simulation Test (1208.29), the Short Circuit Simulation Test (1208.28) and the Heating Test for Lamps and Lampholders (1208.38) of Subpart B of this part.

(3) Class Z—Class Z materials contact or are relied upon to enclose or support electrically live parts whose steady current flow under normal operating conditions is either not limited by an overcurrent protective device or

is limited by an overcurrent protective device rated at more than 300 milliamperes. In addition, Class Z covers all materials, regardless of overcurrent protection, when used as insulation for wire, plugs, fuseholders and connectors. It also covers materials used for lampholders, lamp bases and other assemblies that are not Class X or Class Y applications. Materials used for Class Z purposes shall pass the appropriate component flammability tests (1208.21; 1208.27), the Cascade Failure Simulation Test, (1208.29) the Short Circuit Simulation Test (1208.28) and the Heating Test for Lamps and Lampholders (1208.38) of Subpart B of this part.

(b) *Conductive Materials.* (1) Electrically live parts, except for lamps, wire, and screwshell holders for lamps, fuses and other parts, shall be copper or an alloy that contains at least 60 percent copper by weight. For screwshell holders for lamps, fuses, and other parts, the materials shall be copper or an alloy that contains at least 80 percent copper by weight.

(2) Metallized tinsel and other conductive flexible strips and threads, 0.25 in (6.3 mm) and longer, and located within 1 in (25.4 mm) of a lampholder, fuseholder, plug or connector, shall pass the Conductive Tinsel Test of Subpart B (1208.41).

§ 1208.6 Wiring and assembly requirements.

(a) Wire conductors shall terminate in permanent electrical connections; that is, wire conductors shall not be used to routinely make and break electrical circuits. For lampholders with lamps removable by consumers, this means that wire conductors shall terminate at stationary plates, bars, or other connectors within lampholders which serve as the electrical contacts for making and breaking the electrical circuit when lamps are inserted and removed from lampholders.

(b) The wire connecting two components shall be continuous and free of splices or taps.

(c) Wire within components shall be secured so that the conductor is not exposed and will not become exposed when tension is applied to the wire as described in the performance tests for components: Strain Relief Test for Plug and Connector Connections (1208.35), and Strain Relief Test for Lampholders, Fuseholders, and Other Bodies Except Plugs and Connectors (1208.23) of Subpart B of this part.

(d) The maximum non-transient current flow shall not exceed the value indicated in Table A for the corresponding wire size.

TABLE A.—Wire current ratings

Wire size, in American Wire Gauge (AWG):						
18	19	20	21	22	23	24
Current, in amperes:						
7	5	3	2.5	1.5	1.3	1.0

(e) A string having any wire conductors of cross-sectional area less than No. 20 AWG shall be provided with overcurrent protection so that there are two protective devices, one for each pole, located in the circuit between the attachment plug or add-on connector and the points where the conductor becomes smaller in size than No. 20 AWG. The rating of the devices shall not exceed 3 amperes. See also § 1208.8 for additional overcurrent protection requirements.

(f) Each miniature Christmas tree light set shall have an attachment plug or an add-on connector for connection to the power supply source.

(g) Wire that is not parallel cord, and has a conductor cross-sectional area less than that of No. 20 AWG wire, shall have two or more wires twisted together longitudinally except between components, such as lampholders, mounted on a frame. The maximum length of the lay of the longitudinally twisted wires shall be not more than 10 times the sum of the outside diameters of the wires which are twisted together.

(h) Except where otherwise specified, uninsulated live parts of opposite polarity shall be separated as specified

herein. Also uninsulated live parts shall be separated from dead metal parts which are likely to be exposed to contact by persons as specified herein. The parts shall be separated by a space through air, and over surface of not less than 0.047 inch (1.19 mm). For purposes of this measurement, an unexposed dead metal part interposed between live parts of opposite polarity or between a live part and exposed dead metal is considered to reduce the spacing by an amount equal to the dimension of the unexposed metal part in the direction of the measurement.

(i) All electrically live parts (except for live parts of plug blades for power supply connection) shall be insulated or otherwise enclosed so that they cannot be contacted by the probe in figure 1.

§ 1208.7 Component Requirements.

This section sets forth the design and performance requirements for components of miniature Christmas tree lights.

(a) *Wire.* Wire shall conform to the specifications in table B.

(1) Wire conductors shall consist of individual copper conductor strands.

The wire conductor shall meet the maximum breaking strength requirements as indicated in table B.

(2) The cross-sectional area of wire conductor shall not be less than 391 circular mils (0.198 square mm) and shall be one of the AWG numbers in table B. The allowable area tolerance is minus 3 percent. If the minus tolerance is exceeded, the wire will be considered to be the next higher AWG number. The AWG number signifies the total circular mil area, which is the sum of the circular mil areas of the individual conductor strands.

(3) Wire insulation shall be composed of polyvinyl chloride or a copolymer of vinyl chloride and vinyl acetate, with a minimum average insulation thickness and a minimum insulation thickness at any point of the wire, as indicated in table B.

(4) The distance between distinct conductors of parallel cord shall be at least 1.5 times the required minimum average thickness for the insulation given in table B.

(5) The thickness of insulation for conductors of a parallel cord shall be a minimum of 0.013 in. (0.33 mm) after the distinct conductors have been intentionally torn apart in either direction to separate the conductors.

TABLE B.—Wire specifications

AWG size of conductor	Cross sectional area		Maximum breaking strength		Minimum average insulation thickness (b)		Minimum insulation thickness at any point	
	Circular mils	Square millimeters	Pound-force	N	Inches	Millimeters	Inches	Millimeters
18	1,620	0.823	49.1	218.0	0.023	0.58	0.021	0.53
19	1,290	.653	39.0	174.0	.023	.58	.021	.53
20	1,020	.518	31.0	138.0	.023	.58	.021	.53
21	812	.410	24.6	109.0	.023	.58	.021	.53
22	640	.326	19.4	86.3	.020	.51	.018	.46
23	511	.258	15.4	68.5	.020	.51	.018	.46
24	404	.205	12.7	56.5	.020	.51	.018	.46

(a) Based on a maximum pull rate of 12 in (305 mm) per minute with the conductor insulation removed.

(b) Average insulation thickness is the average of maximum and minimum thickness measured at each of five separate locations along the wire.

(6) Wire shall pass each of the following tests in table C:

TABLE C.—Tests for wire

Test	Paragraph
Insulation resistance	1208.13
Elongation and tensile strength	1208.14
Heat shock	1208.15
Deformation	1208.16
Cold bend	1208.17
Weathering	1208.18
Dielectric	1208.19
Abrasion	1208.20
Flammability	1208.21
Flexing	1208.22

(b) *Plugs and connectors.* (1) Attachment plugs and add-on connectors shall have their blades located parallel to one another spaced 0.500 ± 0.005 inch (12.7 ± 0.13 mm) on centers, and extending out from the face of the plug or connector at least 0.625 inch (15.88 mm) and no more than 0.718 inch (18.24 mm). The blade width shall be 0.250 ± 0.010 inch (6.35 ± 0.25 mm). Except as required in 1208.7(b)(2), the thickness of a blade shall be 0.060 ± 0.005 inch (1.524 ± 0.127 mm).

(2) Plugs and connectors with folded blades shall meet these additional re-

quirements. Except for that portion of a blade within 0.25 inch (6.25 mm) of the face, the thickness of the blade shall be 0.060 ± 0.005 inch (1.524 ± 0.127 mm). Within 0.25 inch (6.35 mm) of the face the thickness of the blade shall not be greater than 0.065 inch (1.65 mm). In an attachment plug or add-on connector having spring-blades, in which only one end of each folded-over blade is secured, the metal stock shall be $0.028-0.032$ inch (0.711-0.813 mm) thick. In an attachment plug or an add-on connector having spring type folded-over blades in which both ends of each blade are se-

cured, the thickness of the metal stock shall not be less than 0.020 inch (0.508 mm).

(3) The face of attachment plugs and add-on connectors in which the blades project shall be in a plane perpendicular to the major axis of the blades. The face shall be a minimum of 0.50 inch (12.7 mm) by 0.875 inch (22.2 mm), with the blades centered and with a maximum radius of 0.22 inch (5.56 mm) at the corners. The 0.875 inch (22.2 mm) minimum dimension shall be perpendicular to the width of the blades. The blades shall be located in the middle of the face with maximum off-center distance of 0.0625 inch (1.59 mm) in any direction.

(4) The parallel slots in the receptacle faces of add-on connectors and end connectors shall be spaced 0.500 ± 0.005 inch (12.70 $\pm$ 0.13 mm) on centers. Slots shall be a minimum of 0.075 inch (1.90 mm), a maximum of 0.095 inch (2.41 mm) in width, and a minimum of 0.265 inch (6.73 mm) and a maximum of 0.285 inch (7.24 mm) in length. The distance across a receptacle face (for example, the diameter of a round face, or distance between opposite sides of a hexagonal face) of an add-on connector and an end connector shall be a minimum of 0.875 inch (22.22 mm). The receptacle slots shall be located in the middle of the face with a maximum off-center distance of 0.0625 inch (1.59 mm) in any direction.

(5) With the exception of phenolic or urea polymeric materials, electrically insulating materials shall be flame retardant as determined by the Flammability Tests for Class Z Applications of subpart B (1208.27). Pliable, molded, natural, or synthetic rubber, a combination thereof, the polymeric materials noted above, a polymer of vinyl chloride or a copolymer of vinyl chloride and vinyl acetate, shall be used for the insulating body of attachment plugs and connectors.

(6) Plugs and connectors shall be capable of withstanding a compressive load of 75 lbf (333.7 N) applied at right angles to the major axis of the plug blades or connector receptacle cavities, as described in the Crush Test for Plugs and Connectors of subpart B (1208.34).

(7) Strings shall be capable of withstanding a pull on the wires leading to a plug or connector without detachment of the wire, exposure of live parts so that they can be contacted by the probe in figure 1, or cutting through wire insulation, as indicated by the Strain Relief Test for Plug and Connector Connections of subpart B (1208.35).

(8) Insulation on wires to plugs and connectors shall be prevented from slipping away from the plug or connector and exposing bare wire as determined by the Security of Insulation Test at Plugs and Connectors of subpart B (1208.36).

(9) Plug or add-on connectors shall enclose electrically energized parts, preventing them from being contacted by the probe depicted by figure 1 when subjected to blade push forces of the Plug and Connector Blade Push Test of subpart B (1208.33).

(10) Each blade of a plug or add-on connector, and the parallel blades tested together, shall be capable of withstanding a tensile force as determined by the Plug and Connector Blade Pull Test of subpart B (1208.32).

(11) Live parts within receptacle openings of add-on and end connectors shall not be capable of being contacted by the probe shown in figure 1.

(12) All wire terminations and other live parts of plugs and connectors shall be completely enclosed, except for receptacle openings on add-on and end connectors and blades projecting from plugs and add-on connectors. There shall be no dependence upon the use of separable covers or discs and parts which perform no function other than to provide strain relief. For purposes of this requirement separable covers and discs are those held in place by only friction without any positive detents, latches, screws, or fasteners.

(13) Receptacles shall enable a mating attachment plug or add-on connector to seat properly without exposing the blades between the plane of the face in which the blades project and the plane of the rim of the receptacle face as determined by the Receptacle Insertion-Withdrawal Tests in subpart B (1208.31).

(14) Plugs and connectors shall not have a temperature rise that exceeds 54° F (30° C), measured as described in the Temperature Test for Plugs, Connectors and Fuseholders of subpart B (1208.30).

(15) Plugs and connectors shall be capable of passing each of the following tests in table D:

TABLE D.—Plug and connector tests

Test	Paragraph
Plug and connector blade pull test.....	1208.32
Plug and connector blade push test.....	1208.33
Receptacle insertion-withdrawal test.....	1208.31
Strain relief test for plug and connector connections.....	1208.35
Security of insulation test at plugs and connectors.....	1208.36
Crush test for plugs and connectors.....	1208.34
Temperature test for plugs, connectors, and fuseholders.....	1208.30
Flammability tests for class Z applications (except wire).....	1208.27

§ 1208.8 Overcurrent protection.

(a) In addition to the overcurrent protection requirement in § 1208.6(e), lamps shall be protected by overcurrent protective devices that prevent ignition under short circuit conditions

with one or more lamps in the shorted circuit as determined by the Short Circuit Simulation Test of subpart B (1208.28). The shorted circuit may be between electrically live parts of opposite polarity or between electrically live parts and ground. In figure 2, overcurrent protective device pair A, A' serves the entire string; overcurrent protective device pair B, B' serves the group of lamp series circuits; and each overcurrent protective device pair C, C' serves an individual lamp series circuit.

(b) Overcurrent protective devices shall be rated at $\frac{1}{2}$ of the current that causes the protective device to open within 2 minutes when operated at room temperature.

(c) If replaceable fuses are used there shall be no electrically live parts of the fuse or holder that can be contacted by the probe in figure 1 during removal and replacement of the fuse.

(d) Insulation materials used for enclosures or holders of overcurrent protection devices must comply with the requirements for class Z materials at § 1208.5(a)3.

(e) Holders for replaceable fuses shall not accommodate the bases of non-fuse lamps used in the string.

(f) If fuses of the string are replaceable, at least one spare fuse, of the original fuse type, shall be provided with the product.

(g) Overcurrent protective devices are subject to the following tests in table E:

TABLE E.—Tests for overcurrent protection device holders

Test	Paragraph
Temperature test for plugs, connectors, and fuseholders.....	1208.30
Flammability test for class Z applications (except wire).....	1208.27
Strain relief test for lampholders, fuseholders, and other bodies (except plugs and connectors).....	1208.23
Crush test for lampholders and fuseholders (other than types which are incorporated in plugs and connectors).....	1208.26

§ 1208.9 Lamps and Lampholders.

(a) Lampholders shall provide a spacing of not less than 0.030 inch (0.76 mm) through air and over surfaces between electrically live parts and dead metal parts. Electrically live parts of a lampholder shall be recessed at least 0.20 inch (5.08 mm) from the lamp entry end of the lampholder.

(b) Lampholders shall have no conductive parts, live and dead (nonenergized), that can be contacted by the probe shown in Figure 1, before, during, or after the insertion of a lamp for which the lampholder is intended with the lamp and lamp contacts in any position permitted by the design.

(c) Lampholders and lamps shall withstand a dielectric breakdown be-

tween the electrically live parts and the outer surfaces of the assembly in accordance with the Dielectric Test for Lampholder and Lamp Assembly of Subpart B (1208.25).

(d) Lampholders, without lamps, shall not crack or expose electrically live parts when subjected to crush forces in accordance with the Crush Test for Lampholders and Fuseholders (Other Than Types Which Are Incorporated in Plugs and Connectors) of Subpart B (1208.26).

(e) Lampholders contacts shall be affixed within the lampholders in a way that will not permit displacement in accordance with the Secureness of Lampholder Contacts Test of Subpart B (1208.24).

(f) Wires within the lampholder shall be affixed so that when forces are exerted on the wires, there will be no exposure of electrically energized parts as specified by the Strain Relief Test for Lampholders, Fuseholders and Other Bodies Except Plugs and Connectors of Subpart B (1208.23).

(g) Miniature Christmas tree lights and decorations shall have lamps with only one operating voltage, unless the lamps are fuse lamps.

(h) Lamps that have shunts shall not be used in series circuits having fewer than 10 lamps or lampholders.

(i) Miniature Christmas tree lights and decorations shall have insulating materials, in accordance with § 1208.5(a). All materials are subject to the Decorative Part Downward Burning Rate Test of Subpart B (1208.37).

(j) The insulating body of a lamp and lampholder shall withstand thermal conditioning at a temperature no lower than 248° F (120° C) for no less than 2 hours with no softening or melting of the material that exposes electrically live parts in accordance with the Heating Test for Lamps and Lampholders of Subpart B (1208.38).

(k) The millivolts drop between the terminals of a lampholder shall not exceed 200 millivolts in accordance with the Millivolts Drop Test for Lampholders of Subpart B (1208.39).

(l) A lamp shall not be able to dissipate a wattage equal to 2.5 times the area of the outside glass bulb surface above the base in square centimeters or 1.25 times the minimum diameter of the lamp (the outside surface of the bulb) in the location of the filament in millimeters, whichever value is less, for more than 2 minutes in accordance with the Maximum Wattage Test for Lamps of Subpart B (1208.40).

(m) Lamps and lampholders shall be capable of passing each of the following tests in Table F:

TABLE F.—Lamps and lampholders tests

Test	Paragraph
Cascade failure simulation test.....	1208.29
Short circuit simulation test.....	1208.28

TABLE F.—Lamps and lampholders tests—Continued

Test	Paragraph
Heating test for lamps and lampholders.....	1208.38
Millivolts drop test for lampholders.....	1208.39
Strain relief test for lampholders, fuseholders and other bodies except plugs and connectors.....	1208.23
Secureness of lampholder contacts test.....	1208.24
Crush test for lampholders and fuseholders (other than types which are incorporated in plugs and connectors).....	1208.26
Dielectric test for lampholder and lamp assembly.....	1208.25
Maximum wattage test for lamps.....	1208.40
Flammability tests for class Z applications (except wire).....	1208.27
Decorative part downward burning rate test.....	1208.37

§ 1208.10 Required Packaging and Labeling.

(a) *Scope.* Miniature Christmas tree lights and similar miniature decorative lights shall meet the packaging and labeling requirements of this section. All cautionary statements required by this section to appear on any package or tag, shall be prominent and shall be conspicuous and legible and in contrast by typography, layout, or color with other printed matter. CPSC regulations at 16 CFR 1500.121 provide type size, placement, and other requirements for cautionary labeling under the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1261). Those regulations indicate how labeling can meet the requirements of the FHSA that labeling appear prominently and conspicuously on the label of a hazardous substance. The Commission suggests that the FHSA regulations at 16 CFR 1500.121 be used as guidelines as to whether labeling required in this standard is prominent, conspicuous and legible.

(b) *Labeling on Light String and Package.* Miniature Christmas tree lights shall have the following information on a label located between the plug and the first lampholder and permanently affixed to the light string: (16 CFR 1500.121(f) may be referred to for determining placement and conspicuousness for these statements).

(i) On one side of the permanently affixed label the following information must appear:

(i) The signal word "Caution or Warning";

(ii) The following statement of hazard: "To avoid fire or shock hazards";

(iii) The additional cautionary information

"Do not use on trees with metal or metallic needles, leaves or branch covering."

"Do not use staples or sharp-edge fasteners which can damage insulation."

"use only decorations over lamps if provided with light set."

(iv) Complete name and mailing address of the domestic manufacturer,

domestic importer, distributor, or private brand seller;

(v) The manufacturer's identification number (may be in code), indicating the style number or name, the lot number, and the year of manufacture;

(vi) The following statement or parts thereof, as applicable: "Use the following chart to safely replace bulbs and/or fuses:

Lamp: — volts.

Fuse (when fuseholder can accommodate glass tube cartridge type fuse): — amps, — min. volts.

Fuse (when fuseholder designed to accommodate fuse other than glass tube cartridge type): replacement model number or equivalent.

(2) The labeling which is required by paragraph (b)(1) of this section shall also appear together prominently and conspicuously on the display panel of the package in which miniature Christmas tree lights and similar miniature decorative lights are displayed for sale to the public.

(c) *Labeling for Spare Bulb.* The following information shall appear on an envelope containing any spare bulb that is provided with the miniature Christmas tree light or similar miniature decorative light:

(1) The voltage of the bulbs;

(2) The manufacturer's identification number (may be in code).

Subpart B—Tests

NOTE.—Unless specified elsewhere in this subpart, tests are to be conducted at ambient air temperatures within the range 66° F (18.9° C) to 84° F (28.9° C) inclusive.

§ 1208.13 Wire Insulation Resistance.

The conductor length of the test specimen shall be a maximum of 5,000 ft (1,524 m). The test voltage shall be between 200 and 1,000 volts direct current inclusive. The measurement shall be made after 1 minute at the test voltage. Measured in room temperature tap water, when the specimen has been immersed for a minimum of six hours, the insulation resistance shall be at least 2.5 (1000)/L megohms, where L is the conductor length of the test specimen in feet, or 2.5 (304.8)/L megohms, where L is the length of the test specimen in meters.

§ 1208.14 Wire Insulation Elongation and Tensile Strength.

(a) For purposes of this test, a specimen consists of not less than a 6 inch (152 mm) length of complete tube formed by the insulation, except that in the case of parallel cords the specimen is the unseparated multiple tube. In order to prepare the specimen, remove individual strands of the conductor from the insulation without damaging the insulation specimen.

(b) For purposes of this test, an aged sample is one which has been placed

in a circulating-air oven, suspended vertically so that it does not touch the oven sides or other specimens, and maintained at an oven temperature not less than 212°F (100°C) for 168 hours.

(c) After aging some of the samples, remove them from the oven and keep them at a room temperature of $75.2 \pm 14.4^\circ\text{F}$ ($24.0 \pm 8.0^\circ\text{C}$) for at least 16 and not more than 96 hours. The unaged samples must be kept at this room temperature for at least 30 minutes.

(d) Use an apparatus that indicates the actual maximum load at which a specimen breaks. If an apparatus with a spring balance is used, be certain that recoil of the spring is prevented.

(e) Clamp each specimen in position with two gauge marks, 2 in (51 mm) apart, located outside of and between the grips. Adjust the movable grip to make the specimen taut, but not under tension. Then adjust the grip so that it moves at a speed of at least 20 inches (510 mm) per minute. In as much as the width of a mark increases when a specimen is stretched, make the measurement of elongation with reference to the center of each gauge mark; that is, a point halfway between the edges of each mark. Allow the apparatus to separate the grips until the specimen breaks. Note the distance between the gauge marks at the time of the break. For an unaged specimen to pass the test, the elongation must be a minimum of 4 inches (102 mm) (200 per cent), and the minimum tensile strength of the wire insulation must be 1600 lbf/in (11.03 megapascals). For an aged specimen to pass the test, the minimum elongation of the wire insulation must be 50 percent of the result obtained with the unaged specimens, and the minimum acceptable tensile strength must be 85 percent of the result obtained with unaged specimens.

(f) For purposes of this test, elongation is the increase in distance between the gauge marks, and tensile strength is the measured load which ruptures the specimen divided by the cross sectional area of the unaged specimen.

§ 1208.15 Heat-Shock Test for Wire Insulation.

(a) Each specimen of wire is to be wound tightly for six complete turns around a mandrel having a diameter of 0.094 in (2.4 mm). Successive turns are to be in contact with one another, and both ends of the specimen are to be securely held in place by friction tape.

(b) Each mandrel with wire attached shall be subjected to a temperature of not less than 250°F (121°C) in a circulating air-oven for one hour. The wire insulation shall be inspected for cracks while the wire is on the mandrel when

it is removed from the oven. The wire insulation must not show any cracks on the surface as determined by the use of 0.002 inch (0.051 mm) gauge. If the gauge enters the plane of the surface when inserted into cracks located on the wire, the wire does not pass.

§ 1208.16 Deformation Test for Wire Insulation.

For purposes of test, the insulation thickness of an insulated conductor is the average diameter over the insulation minus the diameter of the conductor, with the difference divided by two. The average diameter is the average of maximum and minimum diameters measured at each of five separate locations along the wire. On a 1 inch (25.4 mm) or longer length of insulated conductor, measure the insulation thickness with a loading mechanism consisting of a dead-weight dial micrometer with a presser foot 0.375 inch (9.52 mm) in diameter that exerts a force of at least 0.1808 lbf (0.805 N) on the specimen. Following this, place the test specimen and the loading mechanism so that they are not in contact with each other in a circulating-air oven, maintained at a temperature not less than 250°F (121°C). After one hour, the micrometer is to be placed on the specimen with the force exerted by the micrometer plus additional force to equal a total of 0.552 lbf (2.46 N) for wire with conductors smaller in size than No. 20 AWG, and 0.882 lbf (3.93 N) for wire conductors No. 20 AWG and larger in size. After one hour at this force, and while in the oven, measure the insulation thickness. To pass the test the insulation thickness under the force must not be less than 50 percent of the initial measurement.

§ 1208.17 Cold-Bend Test for Wire Insulation.

Subject a wire specimen and a 0.25 inch (6.35 mm) diameter mandrel to a temperature of -31°F (-34.9°C) for one hour. While maintaining the wire specimen and mandrel at that temperature, wind the wire tightly for six complete turns around the mandrel, at the rate of about 3 seconds per turn (18 ± 3 seconds for six turns). Successive turns are to touch one another. Maintain the wire tightly wrapped around the mandrel. To pass the test, wire insulation must show no cracks when inspected with the wire on the mandrel as determined by the use of a 0.002 inch (0.051 mm) gauge. If the gauge enters the plane of the surface when inserted into cracks located on the wire, the wire does not pass.

§ 1208.18 Weathering Test for Wire Insulation.

(a) To pass this test, wire insulation that has been subjected to simulated outdoor weathering shall exhibit ten-

sile strength and ultimate elongation not less than 80 percent of those of unweathered specimens. For this test, outdoor weathering shall be simulated by exposure of wire to a source of ultraviolet light and water spray in an artificial weathering apparatus as described in the following paragraph.

(b) The weathering test equipment shall be xenon arc (water-cooled) Weather-Ometer employing a lamp rated at 6500 watts and automatic light monitoring and control systems. Borosilicate inner and outer filters shall be used. The wire specimens shall be mounted vertically on the inside of the specimen drum. The specimen drum is to rotate at one revolution per minute. The specimens shall be exposed to a radiant flux of 323 microwatts per square inch (50 microwatts per square centimeter or 12 calories per second per square centimeter) while monitoring at a wave length of 3400 angstroms (340 nanometers). A continuous water spray cycle of 3 minutes on followed by 17 minutes off shall be used throughout the test. The temperature within the apparatus while in operation but with the spray off shall be $145 \pm 9.0^\circ\text{F}$ ($63.0 \pm 5.0^\circ\text{C}$). The specimens are to be retained in the Weather-Ometer for a period of 1253 hours.

(c) After 1253 hours have elapsed, cool the samples to room temperature and then remove them from the apparatus. Remove the conductors from the insulation, and then test the insulation for tensile strength and elongation as directed in the test by that name.

§ 1208.19 Dielectric Tests for Wire Insulation.

(a) The insulation on wire must withstand without breakdown for a period of 1 minute the application of a 60 hertz sinusoidal potential of 1250 volts rms between the conductor and conductive foil tightly wrapped over the wire (except not wrapped over the ends of the wire).

(b) The insulation on the individual conductors which are joined together to form an integral multiconductor cords must withstand for one minute without breakdown between conductors the application of a 60 hertz sinusoidal potential of 1250 volts. The test potential is to be applied between each circuit conductor and every other circuit conductor. For each test, the applied potential is to be increased from zero at a uniform rate that is not less than 125 volts in 60 seconds, and is not more than 500 volts per second. The increase is to continue in this manner until the voltage reaches the level specified above. If this level is reached without breakdown, the voltage is to be held constant at the specified level for 60 seconds and is then to be reduced to zero at the rate mentioned

above. If the wire insulation withstands these tests without breakdown, the wire insulation passes.

§ 1208.20 Abrasion Test for Wire Insulation.

(a) The insulation on wire must not wear through to expose the conductor in 400 or fewer cycles of the abrasion procedure described in the following paragraphs.

(b) Straight specimens of insulated wire are to be tested without any conditioning. One end of each specimen is to be attached to a reciprocating table or equivalent while the table is at one end of its travel. The other end of each specimen is to be attached so that there is a tensile force not less than 0.25 lbf (1.11 N). Each specimen is to be placed over a quarter cylinder to whose outer surface an unused sheet of medium grade emery cloth ($\frac{1}{2}$) is attached. The radius of the surface of the emery cloth is to be 3.5 ± 0.25 inches (89 ± 6 mm). The longitudinal axis of the quarter cylinder is to be perpendicular to each of the planes that contain the specimens as they move on, and are abraded by, the emery cloth. The table or equivalent is to be started in its reciprocating motion (simple harmonic motion) at the rate of between 20 and 30 cycles per minute inclusive, each cycle consisting of one complete back and forth motion with a stroke of not less than 6.25 inches (159 mm). The table is to be stopped every 50 cycles and the emery cloth is to be shifted slightly to one side so that in subsequent cycles each specimen is abraded by a fresh surface of the cloth. The wire is not acceptable in the size being tested if the strands are exposed anywhere on any of the specimens in 400 or fewer cycles of the abrasion.

§ 1208.21 Flammability Test for Wire Insulation.

(a) A length of wire is to be held taut in a horizontal position between two supports in a chamber approximately 24 inches (610 mm) long, approximately 12 inches (305 mm) wide, and approximately 12 inches (305 mm) high, open at the top and on one long side to permit an air flow of not greater than 30 ft (9.14 m) per minute. Dry absorbent surgical cotton is to be placed over the bottom of the test chamber, with no more than 9 inches (229 mm) between the cotton and the test specimen. The specimen is to be marked at distances of 2 inches (51 mm), 7 inches (178 mm), and 13 inches (330 mm) from one point of support of the wire. The flame from a Bunsen or Tirrill burner using methane gas is to be applied for 30 seconds to the sample at the 2 inch (51 mm) mark with the burner in a vertical position, and the tip of the blue inner flame applied to the underside of the wire. The

barrel of the burner, having a bore of 0.375 inch (9.52 mm) and a length of approximately 4 inches (102 mm) above the primary air inlets, is to be adjusted to give a 2 inch (51 mm) flame with the blue inner cone equal to one third of the flame height. If the sample flames, the time of flaming is to be recorded as the time required for the flame to progress along the marked 6 inch (152 mm) section (between the 7 inch (178 mm) and 13 inch (330 mm) marks).

(b) If the sample does not flame, or if the flaming extinguishes before reaching the 13 inch (330 mm) mark, or if the finished wire shows a rate of flaming no greater than 1 inch (25.4 mm) per minute, and no flaming particles or drips falling from the sample ignite the cotton, the test is passed.

§ 1208.22 Flexing Test for Wire.

(a) Bend each specimen into the form of a flat-bottomed, square-cornered U with the legs of the U straight and of equal length. Tape the bottom of the U to the side of a movable round rod (A in Figure 3) with the axis of the conductor or conductors parallel to the longitudinal axis of the movable rod and the legs of the U extending perpendicular to the longitudinal axis of the movable rod between a pair of fixed round rods (B in Figure 3) that are 0.25 inch (6.35 mm) in diameter. Apply full force of 0.75 ounce force (0.209 N) to the free end of each leg. The longitudinal axes of the two fixed rods are to be equidistant from the movable rod before the flexing motion begins, and continually parallel to one another and to the longitudinal axis of the movable rod to which the specimens are taped. The distance between the two fixed rods is to result in the specimens being midway between the rods with a space from specimen to rod of not less than 0.0156 inch (0.397 mm), and not more than 0.0625 inch (1.59 mm).

(b) While passing the current that is indicated in Table A through the conductors, operate the movable rod in the pivoted motion (simple harmonic motion) depicted by the broken lines in Figure 3, at the rate of between 10 and 15 cycles per minute inclusive, each cycle consisting of one complete back and forth motion through an angle of 180 degrees centering about the points of flexure. After 6000 cycles stop the motion. Cut each specimen open and examine for broken strands at the points of flexure against the two fixed rods. The wire is acceptable in the size tested if half or fewer than half of the strands are broken in each leg of the specimens tested.

§ 1208.23 Strain relief test for lampholders, fuseholders and other bodies except plugs and connectors.

(a) The connection of wires to a body must be capable of withstanding

a single pull of 8 lbf (35.6 N) applied to each of the wires individually, and to all possible combinations of the wires, in any direction. Each pull is to last for at least one minute. If a knot in the wires is provided outside the body, the pull is to be applied to each of the wires, with the knot between the point of application of the pull force and the body, without undoing the knot. Lampholders are to have lamps inserted and fuseholders are to have fuses inserted during the tests of those bodies.

(b) *Wire Pull—Method 1.* The body is to be secured in a manner that does not additionally support the wire connection, an example of which is shown in Figure 4.

(c) *Wire Pull—Method 2.* (1) The pull is to be applied between all combinations of any two wires to the body. The body shall not be secured for this test. See Figure 5.

(2) The results are considered acceptable if no live part becomes exposed as a result of a pull. Exposure means being contacted by the probe in Figure 1 before, during or after a pull on the conductor. In addition, a wire conductor is considered to be exposed before, during and after the pull if the end of the wire insulation does not enter the plane of the wire entry opening. Breakage of the wire conductor constitutes a failure, unless the break occurs at the jaws or attachment of the wire to a pulling device, in which case the results are to be discarded and another sample tested.

§ 1208.24 Secureness of lampholder contacts test.

(a) The reliability of the secureness of the contacts is to be determined in their as-received condition, following 7 hours of normal operation of the string in a position tending to cause the greatest heating of the lampholder, and then cooling to room temperature. The test force of 2 lbf (8.9 N) is to be applied for no less than 1 minute in a direction tending to force the contacts out of the lampholder after removing the lamp. The force is to be applied to each of the wires individually, and to all possible combinations of the wires exiting from the lampholder 0.125 ± 0.031 inch (3.18 ± 0.79 mm) from their point of entry into the lampholder body.

(b) To pass the test, there must be no displacement of the contact in excess of 0.031 inch (0.79 mm) or which allows an electrically live part to be touched by the probe shown in Figure 1.

(c) Exception: If a knot in the wires is provided outside the body of the lampholder as a means of securing the contacts, preventing the attachment of the clamping device 0.125 inch (3.18 mm) from the lampholder body, the clamp is to be secured immediately adjacent to the knot on the side away from the lampholder.

§ 1208.25 Dielectric test for lampholder and lamp assembly.

(a) To pass this test, the assembly of a lampholder and lamp must withstand without breakdown, for a period of 1 minute, the application of a 60-hertz sinusoidal potential of 1,250 volts, with the voltage increased from zero at a rate not to exceed 500 volts per second, between the electrical conductors and metal foil placed over the assembly and arranged to conform to its shape. The wire leads to the lampholder may serve as the electrode for the electrical conductors within the assembly.

§ 1208.26 Crush test for lampholders and fuseholders (other than types which are incorporated in plugs and connectors).

(a) A complete lampholder without a lamp or fuseholder without a fuse, with wires attached, shall be tested.

(b) A lampholder or fuseholder is placed between two flat surfaces parallel to each other and parallel to the major axis of the holder. Apply 16 lbf (71.2 N) compressive force perpendicular to the major axis and to the plane of the flat surfaces against the holder. For lampholders and fuseholders with open ends for lamp or fuse insertion, the force is to be applied at the open end for 1 minute and distributed along the holder body from the edge of the opening to a point no further than 0.20 inch (5.08 mm) from the edge. To pass the test, there must be no cracks or exposure of electrically energized parts that can be contacted with the probe in Figure 1.

§ 1208.27 Flammability tests for class Z applications (except wire).

(a) Test specimens are to be conditioned for at least 40 hours at a temperature of $73.4 \pm 3.6^\circ \text{F}$ ($23.0 \pm 2.0^\circ \text{C}$) and a relative humidity of 50 ± 5 percent prior to testing. Other test specimens are to be conditioned in a circulating air oven for not less than 168 hours at 158°F (70°C) and then cooled in a desiccator, over anhydrous calcium chloride, for at least 4 hours at room temperature prior to testing. The test is to be conducted in a chamber, with an air flow no greater than 30 ft (9.14 m) per minute.

(b) Each specimen is to be supported from the upper 0.25 inch (6.4 mm) of the specimen, with the longitudinal axis vertical, by a clamp on a ring stand or the equivalent so that the lower end of the specimen is 0.375 inch (9.5 mm) above the top of the burner tube during flame application and 12 inches (305 mm) above a horizontal layer of dry absorbent surgical cotton (2 by 2 inch (51 by 51 mm) swatch thinned to a maximum free standing thickness of 0.25 inch (6.4 mm)).

(c) A Bunsen or Tirrill burner having a bore of 0.375 inch (9.52 mm)

and a length of approximately 4 inches (101.6 mm) above the primary air inlets, using methane gas, is then to be ignited and adjusted to produce a blue flame 0.75 inch (19 mm) high. The flame should be obtained by adjusting the gas supply and the air ports of the burner until a 0.75 inch (19 mm) yellow-tipped blue flame is produced and then an increase in the air supply is to be made until the yellow tip disappears. The height of the flame is to be measured again and corrected to 0.75 inch (19 mm) if necessary.

(d) The test flame is to be brought to a central location under the lower end of the test specimen and allowed to remain for 10 seconds. The test flame is then to be withdrawn at least 6 inches (152 mm) away and the duration of flaming of the specimen noted. When flaming of the specimen ceases, the test flame is to be immediately placed again under the specimen. After 10 seconds, the test flame is again to be withdrawn, and the duration of flaming and glowing is to be noted. The illumination in the area when the test is performed shall not exceed 0.3 foot-candles.

(e) If the specimen drips molten or flaming material during either flame application, the burner may be tilted to an angle up to 45 degrees and also slightly withdrawn away from one of the sides of the specimen during the flame application to avoid materials dripping into the tube of the burner. If the specimen drips molten or flaming material or is consumed during the test, the burner is to be hand-held, and the 0.375 inch (9.5 mm) distance between the bottom of the specimen and the top of the burner tube is to be maintained during the flame application. Any molten strings of the material are to be ignored, and the flame is to be applied to the major portion of the specimen.

Observe and record the following:

(A) Duration of flaming after first flame application.

(B) Duration of flaming after second flame application.

(C) Duration of flaming plus visible glowing after second flame application.

(D) Whether or not specimen drips flaming particles which ignite cotton swatch.

(f) To pass the test, a test sample must not burn with flaming combustion for more than 10 seconds after each application of the test flame; no specimen may drip flaming particles that ignite the dry absorbent surgical cotton located 12 inches (305 mm) below the test specimen; and no specimen may have glowing combustion which persists beyond 30 seconds after the second removal of the test flame.

§ 1208.28 Short circuit simulation test.

(a) Electrical supply circuits of 125 volts, 60 hertz, calibrated to deliver

200 amperes to the string under short circuit conditions; and 125 volts, 60 hertz, calibrated to deliver 1,000 amperes to the string under short circuit conditions; each protected by a 20 ampere circuit breaker shall be used.

(b) This test is to be conducted on a string placed on a bed of dry absorbent surgical cotton. If the string has more than one lamp series circuit, the test must be performed using only one of those circuits the one with the longest length of wires between the plug and the first lampholder in the circuit. The test must be conducted with lamps having shunts (if used).

(c) Trace one wire from the plug to the first lampholder in the lamp series circuit that is provided with or can accommodate a lamp having a shunt (if used). Cut the wire midway between that lampholder and the next lampholder in the series circuit. If lamps without shunts are used exclusively, cut wire midway between the second and third lampholder. Strip the insulation from the wire extending from the first lampholder. Cut the wire between the plug and the last lampholder of the series string. Strip insulation from the wire extending from the plug. Twist the ends of the two stripped wires firmly together. Place dry absorbent surgical cotton over the complete test sample. Connect the plug to the 200 ampere electrical supply circuit, and by means of a switch, energize the test circuit. Repeat the test on another sample with one less lampholder in the circuit until only the overcurrent protective device is in the test circuit.

(d) Repeat the above steps on the 1,000 ampere electrical supply circuit. The test is passed if there is no breakage of the glass envelope of a lamp or fuse (if used), no expulsion of fragments from the test sample, and no ignition of the surrounding cotton.

§ 1208.29 Cascade failure simulation test.

(a) In this simulation, a lamp series circuit is represented by a single lamp, lamp base, and lampholder with wires attached, and a variable resistor or equivalent. The lamp, lampbase and lampholder together comprise a lamp assembly. The circuit is operated with the overcurrent protective devices which normally serve the circuit.

(b) Figure 6 shows a schematic diagram of the test circuit for the simulation of a cascade failure in a string where a pair of overcurrent protective devices serves only one lamp series circuit. For the simulation where a pair of overcurrent protective devices serves more than one lamp series circuit, the lamp series circuits that are in addition to the one circuit being represented by the lamp assembly and variable resistor, are to be electrically connected in parallel to the lamp assembly and variable resistor. At least

one of the additional lamp circuits is to be open circuited during the test.

(c) In general, the test will require the use of components from more than one string. Select the lamps for the string under test that have the hottest operating bulb surface temperatures. Decorative parts around the lamp, lampbase, and lampholder are to be in place during the test except as noted below. Additional fuses (if used) are to be obtained from other strings of the identical type.

(d) An unenergized lamp assembly from the same string or one of the identical type must be rested on top of the lamp assembly under test such that the part of the unenergized lampholder at which the internal contacts are closest to the surface is touching the bulb envelope of the tested assembly at a point as close as possible to the lamp filament. This may require rotating the lamp assembly under test so that the point at which its lamp filament is closest to the bulb envelope is also the point that contacts the unenergized lampholder. Maintenance of this contact is required throughout the test. For a string supported on a frame where the lampholders are separated to prevent lamps from contacting adjacent lampholders, the unenergized lamp assembly placement step noted herein may be omitted.

(e) For light strings with decorative parts around the lamp, lampbase, or lampholder that can be removed, the Cascade Failure Simulation Test must be performed both with and without the parts in place. In this situation, the above requirement that an unenergized lamp assembly be placed over the lamp assembly under test applies only when the decorative parts are not in place.

(f) To determine the normal current flow in a lamp series circuit, replace all lamps that operate intermittently (for example, bulbs that have thermally actuated internal contacts to alternately open and close the series lamp circuit) with steadily burning lamps, and connect the string to a 120 volt, 60 hertz power supply. Measure the current. For multiple series circuit strings, measure the current in each lamp series circuit and calculate its average value. This is considered to be the normal lamp current. The variable resistor must have a resistance range up to at least 10 percent greater than the operating resistance of a lamp series circuit.

(g) Remove lamp assemblies by cutting the wires between each assembly selected and the nearest adjacent assemblies. Connect one assembly in the appropriate test circuit as shown in Figure 6. With the variable resistor at the maximum setting, connect the test circuit to the power supply. Increase the current through the assembly by adjusting the variable resistor until

the previously determined normal lamp circuit current is reached and hold this value for a 5 minute $\pm$ 20 second period. After this period, increase the current to a value that is 20 ± 1 percent below the maximum current that either the overcurrent protective devices or the lamp filament would pass (whichever is lower) if the current were increased from the normal current at a rate approximately 10 milliamperes every 10 seconds; these points having been previously determined by successive trials.

(h) If there is no discernable physical change in appearance, such as melting or dripping of materials, after 10-11 minutes increase the current in successive steps of 5 percent of the previous value, maintaining each step for a 5-6 minute period. If there is discernable physical change in appearance at any step, continue operation at that step for an additional 5-6 minutes. Continue this stepping process until either the lamp filament or the overcurrent protective device opens the circuit. For a valid test, the filament must operate for at least 10 minutes at a current above the normal value. If repeated samples open-circuit before the required 10 minute operating period is complete, reduce the value of the first over-current step by 5 percent and repeat the test on additional samples.

(i) If the lamp filament opens and the lamp shunt and overcurrent protective devices are still operational, increase the current in successive steps equal to 10 percent of the overcurrent protective device rating, maintaining each step for a 3-4 minute period. If there is discernable physical change in appearance at any step, continue operation at that step for an additional 10-11 minutes. Continue this stepping process until either the lamp shunt or the overcurrent protective device opens. If desired to save time, the lower current steps which begin after the filament opens, may be omitted so long as at least three consecutive steps are passed through just prior to opening either the lamp shunt or the overcurrent protective device.

(j) To pass the test, there must be no exposure of electrical conductors either in the lamp assembly under test or in the unenergized lampholder over it such that they can be contacted by the probe in Figure 1 and there shall be no ignition of any parts of the string during the test.

§ 1208.30 Temperature Test for Plugs, Connectors and Fuseholders.

(a) To pass this test, wire terminations and other live parts of plugs, connectors, and fuseholders must operate at 15 amperes with a maximum temperature rise of 54°F (30°C), except that: (1) Attachment plugs, and connectors and fuseholders (but not add-

on connectors) are to be operated at the current rating of the connecting wire with a maximum temperature rise as set forth above; and (2) circuits protected by non-replaceable or non-interchangeable overcurrent protection devices are to be operated at the maximum value at which the device will operate continuously for at least two hours without the overcurrent protection devices opening the circuit (except as provided under paragraph (a) of this section), with a maximum temperature rise as set forth above.

(b) When testing plugs and add-on connectors, the connections to the blades are to be made to minimize heating from the connection. When testing receptacles, the receptacle contacts are to be tested together by means of an inserted attachment plug. They are to be tested after having been subjected to the overload test described in the following paragraph.

(c) Overload Test: Insert and withdraw an attachment plug having rigidly secured solid blades which are connected through a flexible cord to a load. Cause the connector to make and break 22.5 amperes (except that end connectors are to make and break 150 percent of the current rating of the connecting wire) for 50 cycles of operation at a rate no faster than 10 cycles per minute. The blade of the plug is to mate with the receptacle contact for no more than 1 second during each cycle.

(d) The unrestricted attachment plug is to be inserted and withdrawn with an average velocity of 30 ± 3 inches (762 ± 76 mm) per second in each direction during a 2.5 inch (63.5 mm) stroke measured from the fully inserted position. The potential of the test circuit is to be 120 volts ac, with the power factor between 0.75 to 0.80 inclusive.

(e) To pass this test, there must be no electrical or mechanical failure of the connector, or undue burning or pitting of the receptacle contacts.

§ 1208.31 Receptacle Insertion-Withdrawal Tests.

(a) This test is to be conducted using an attachment plug or add-on connector having solid blades which are 0.260 inch (6.60 mm) wide, 0.065 inch (1.651 mm) thick, and extend out 0.718 inch (18.24 mm) from the face of the plug or connector.

(b) The force needed for initial insertion of the blades of an attachment plug and add-on connector into the receptacle of a connector to within at least 0.0313 inch (0.793 mm) of full insertion must not exceed 20 lbf (89 N). The force needed to withdraw the blades after the first insertion and subsequent insertions must not exceed 15 lbf (66.75 N). The force needed for subsequent insertions of the blades to within at least 0.0313 inch (0.793 mm)

of full insertion must not exceed 15 lbf (66.75 N). After 10 conditioning cycles of insertion and withdrawal of the blades, a pull of 3 lbf (13.35 N) in a direction normal to the face of the receptacle body and tending to withdraw the blades is to be applied for one minute. The results are acceptable if there are no exposed live parts that can be contacted by the probe in Figure 1.

(c) To pass the test, electrically live parts of a connector must remain insulated or enclosed as a result of the insertion and withdrawal forces so that they can not be contacted with the probe in Figure 1.

(d) In addition, to pass the test, the blades must not be accessible following the application of the insertion forces described in the previous paragraph using a 0.0313 inch (0.793 mm) thick feeler gauge whose width is not less than 0.20 inch (5.08 mm).

§ 1208.32 Plug and Connector Blade Pull Test.

(a) Support plugs and add-on connectors so that tensile forces can be applied to the blade or blades along their longitudinal axes without restricting possible displacement of the blades and/or breakage of the enclosure of electrically live parts.

(b) Apply a 20 lbf (89 N) to each blade in succession and to the two blades tested together. Maintain each force for two minutes.

(c) The test is passed if a blade is not displaced more than 0.094 inch (2.38 mm). Measurements are to be made not less than 2 minutes nor more than 4 minutes after removal of the force.

§ 1208.33 Plug and Connector Blade Push Test.

(a) Support plugs and add-on connectors so as not to restrict possible displacement of the receptacle contacts and/or breakage of the enclosure of electrically live parts. Subject each blade, in turn, to a force of 35 lbf (155.6 N) applied gradually along the longitudinal axis of the blade in a direction toward the face of the plug or connector in which the blades project. Maintain the force for a period of one minute. This test is passed if neither blade is displaced more than 0.094 inch (2.38 mm) and the enclosure is not opened to expose electrically live parts so that they can be contacted by the probe in Figure 1 (except for the blades projecting as intended from the face of the plug or connector) as a result of the applied force.

§ 1208.34 Crush test for plugs and connectors.

A force of 75 lbf (333.7 N) is to be applied gradually to the surface of the plug or connector body at a right angle to the major axis of the plug blades or receptacle cavities for a

period of 1 minute. The test is to be repeated on a different sample with the compressive force applied from a direction perpendicular to the direction of the previously applied force, and also perpendicular to the major axis of the plug blades or receptacle cavities. To pass the test there must be no cracking of the plug or connector body to expose electrically live parts as determined using the probe of Figure 1, and no contact made between conductor parts of opposite polarity.

§ 1208.35 Strain relief test for plug and connector connections.

(a) With the plug or connector body securely anchored (by the blades in the case of a plug), the wires are to be pulled together steadily for 1 minute in the direction normal to the plane of the cord entrance with a force of 30 lbf (133.5 N) for No. 18 AWG wires and 20 lbf (89 N) for wires smaller in size than No. 18 AWG.

(b) If no conductor is detached and if no bare conductor is beyond the plane of the wire entry opening or can be contacted by the probe in Figure 1, the construction passes the test.

§ 1208.36 Security of insulation test at plugs and connectors.

(a) To determine that the wire insulation is secured as required, the plug or connector is to be tested with at least 6 inch (152 mm) lengths of wires.

(b) The insulation on each conductor of the wires is to be split parallel to the conductor for a short distance at a point approximately 1 inch (25.4 mm) from its entry into the plug or connector and all strands of the conductor are to be severed at the split portion. With the plug or connector body securely anchored (by the blades in the case of a plug), a direct pull of 15 lbf (66.75 N) for No. 20 AWG and larger size wires and 10 lbf (44.50 N) for wires less than No. 20 AWG is to be applied to the free ends of the wires together for 2 minutes.

(c) The test is passed if there is no detachment of the insulation from within the plug or connector, no baring of the conductors at the entry to the plug or connector that can be contacted with the probe in Figure 1, and no bare conductor beyond the plane of the wire entry opening.

§ 1208.37 Decorative part downward burning rate test.

(a) The decorative part is to be supported on a noncombustible surface in a location having an air flow no greater than 30 ft (9.14 m) per minute. With the specimen positioned so as to place one of its major surfaces in a substantially vertical plane, the uppermost edge or surface is then to be ignited through the use of any convenient open flame such as an ordinary

paper bookmatch. (To facilitate ignition, in the case of molded form or figure not having an exposed edge, it may be necessary to cut a slit or opening in the desired area.) Once the decorated part is ignited, the ignition flame is to be removed and the vertical downward burning rate is to be determined by measurement of burning distance in inches and time in seconds. Usually a vertical downward burning distance of 6 inches (152 mm) is sufficient to determine the burning rate; however, in the case of parts less than 6 inches (152 mm) in height, a shorter distance may be used. Where the finished part is too small to permit determination of the vertical downward burning rate, it is necessary to test larger test specimens of the same material and minimum thickness.

(b) If repeated attempts to ignite the material fail to sustain combustion, the material is considered to comply with the requirements.

(c) Where the decorative part consists of a combination of two or more materials the burning rate is to be determined on the combination unless it is determined that each material, when tested by itself, complies with the maximum allowable burning rate.

(d) To pass the test, the vertical downward burning rate must be less than or equal to 4 inches (102 mm) per 60 seconds.

§ 1208.38 Heating test for lamps and lampholders.

A circulating-air oven maintained at a uniform temperature of no less than 248° F (120° C) is to be used for the heating test. Lampholders with non-energized lamps are to be suspended in the oven by the wires to them. Additional lampholders with non-energized lamps are to be placed in the oven on their sides on flat surface(s). After a minimum of two hours of heating, the samples are to be removed and, after cooling to room temperature, examined for exposure of electrically live parts as determined by contact with the probe in Figure 1.

§ 1208.39 Millivolts drop test for lampholders.

A lampholder is to be fitted with a lamp base in which the lamp has been replaced by a short length, not more than 1 inch (25.4 mm), of No. 30 AWG solid copper wire. The lampholder assembly is to be placed in the position of the lamp assembly shown in Figure 7. The overcurrent protective devices are to be short circuited and the current is to be increased to 135 percent of the rating of the overcurrent protective device. The voltage between the wires coming from the assembly is to be measured. To pass this test, the drop between the wire is not to exceed 200 millivolts.

§ 1208.40 Maximum wattage test for lamps.

The lamp is to be inserted into the lamp assembly shown in Figure 7. With the variable resistor at the maximum setting, connect the test circuit to the power supply. Adjust the variable resistor until the product of the current (in amperes) and the voltage across the lamp in volts is no greater than the wattage specified in § 1208.9(1). This adjustment should be completed within 60 seconds after power application. To pass this test, the lamp filament must open within two minutes after the specified wattage is achieved.

§ 1208.41 Conductive tinsel test.

(a) Metallized tinsel and other conductive flexible strips and threads, 0.25 inch (6.4 mm) and longer, and located within 1 inch (25.4 mm) of a lampholder, fuseholder, plug or connector shall be tested.

(b) Strips or threads of material shall be secured between two copper alloy clamps which are separated by not less than 0.25 inch (6.4 mm). Enough strips or threads are to be used to result in a single layer of material adding up to a total width of not less than 0.25 inch (6.4 mm).

(c) With an adjustable power supply, starting from zero, the applied voltage shall be gradually increased up to 120 volts ac.

(d) To pass the test, the material shall result in a current of less than 5 milliamperes or the material shall cause the circuit to open before this value is attained.

Subpart C—Recommendations

§ 1208.50 General materials.

Materials should be used which are appropriate to the functions of the parts they comprise.

§ 1208.51 Conductive materials.

Parts that are not electrically energized, but serve to enclose, or support, or secure enclosures of, electrically energized parts, should be of stainless steel, or plated or coated iron or steel, or otherwise protected against corrosion.

§ 1208.52 Plugs and connectors.

(a) *Faces of attachment plugs and add-on connectors.* The faces of attachment plugs and add-on connectors should be 0.75 (plus 0.0, minus 0.020) inch (19.05 (plus 0.0, minus 0.51) mm) by 1.0 (plus 0.0, minus 0.025) inch (25.4 (plus 0.0, minus 0.64) mm), with the blades centered and with a maximum 0.22 inch (5.56 mm) radius at the corners; the 1.0 inch (25.4 mm) dimension should be perpendicular to the width of the blades.

(b) *Bodies of attachment plugs and add-on connectors.* The bodies of at-

tachment plugs and add-on connectors should be of a shape that is not likely to be grasped at the periphery of the face at which the blades project, but rather is conducive to being gripped at a section formed for that purpose. The gripping area should extend over a distance of at least 0.687 inch (17.46 mm) located between two higher sections. The section at the rear should have a sharply defined projection at least 0.094 inch (2.38 mm) high, with a base of at least 0.063 inch (1.59 mm). In place of the gripping area, a finger grip in the form of a closed loop capable of accommodating fingers may be provided. Plugs and add-on connectors should not have wire(s) that projects from the plug or add-on connector in the finger grip area.

(c) *Recessed live parts.* Add-on and end connectors should have live parts within receptacle openings recessed at least 0.25 inch (6.35 mm) from the receptacle face.

(d) *Closures for receptacle openings.* Add-on connectors and end connectors should have receptacle openings that are reliably and effectively closed with insulating material. The closing means:

(1) Should, when in closed position, prevent a straight steel wire, 0.010 inch (0.254 mm) in diameter (No. 30 AWG), from touching any receptacle electric contact.

(2) Should be removable from the receptacle, but should not be removable from the string.

(3) Should be capable of normal displacement from (complete removal if appropriate), and return to (insertion if appropriate), the receptacle without breakage or damage, both before and after the connector and closing means have been conditioned for 7 hours at 158.0° F (70° C) in a circulating-air oven. The displacement and return operation after conditioning should be conducted after the parts have cooled to room temperature. If the closing means is removable from the receptacle, the conditioning should be conducted with the closing means positioned in the connector. A closing means not positioned in the receptacle should also be subjected to the conditioning.

(4) Should not impair the performance of the connector as determined after three simulated cycles of use, each cycle consisting of normal displacement and return of the closing means.

(5) Should not serve as a tab or handle that can be used to open another closing means on the connector.

(6) Should not be provided with handles, loops, knobs, or the like that might facilitate removal.

(7) Should be capable of withstanding a straight pull of no less than 1 pound applied perpendicular to the face of the receptacle, without the clo-

sure being removed from the receptacle.

(e) *Exposure of plug blades.* Receptacles should accommodate plug blades without exposure of the blades between the faces of the plug and receptacle as follows: The determination should be made using plug blades which extend out 0.718 inch (18.24 mm) from the face of the plug and after full insertion should not be accessible using a 0.010 inch (0.254 mm) thick feeler gauge whose width is not less than 0.020 inch (5.08 mm).

§ 1208.53 Recommended labeling.

(a) At least the following care and use instructions should appear as additional cautionary labeling on either a display panel of the package or on a separate notice inserted in the package to assist consumers:

(1) Instructions for testing and inspecting the light strings prior to use;

(2) Instructions for the proper replacement of bulbs and fuses;

(3) Instructions for proper storage;

(4) Special precautions for outdoor use;

(5) A cautionary message to keep young children away from light strings and bulbs;

(6) If the light string has a separate end connector receptacle, a statement indicating that only other miniature lights or decorations with miniature lights should be attached to the receptacle.

(b) The Commission regulations at 16 CFR 1500.121 (a), (c), and (d) may be used as guidance in determining the placement and conspicuousness of these statements.

(c) If the care and use instructions are provided on a separate insert notice, all information that is required by § 1208.10(c) to appear on the permanent label and packaging should also appear on the insert sheet immediately preceding the directions for use.

Interested persons are invited to submit written data, views, or arguments regarding any aspect of the proposed standard on or before July 3, 1978. Comments submitted after this date will be considered to the extent practicable. Commentors are requested to cite the specific sections of Part 1208 being commented upon and to identify the specific portions of other documents to which they refer.

The Commission is particularly interested in obtaining, either by written comment or by oral presentation, additional data, views, and arguments on the following matters:

(a) The degree and nature of the risk of injury the rule is designed to eliminate or reduce;

(b) The approximate number of consumer products, or types or classes thereof, subject to the rule;

(c) The need of the public for consumer products subject to such rule,

and the probable effect of such a rule upon the utility, cost, or availability of such products to meet that need;

(d) Any means of achieving the objective of the rule while minimizing adverse effects on competition or disruption or dislocation of manufacturing and other commercial practices consistent with the public health and safety;

(e) The necessity of the rule to eliminate or reduce the unreasonable risk of injury associated with the consumer products subject to the rule;

(f) Whether the rule is in the public interest;

(g) Any adverse effects that this proposed rule will have on elderly and handicapped persons;

(i) Whether the proposed effective date of the rule is reasonable and necessary.

Comments should be accompanied, to the extent possible, by supporting data or documentation. Requests for

confidentiality of documentation will be handled in accordance with the Freedom of Information Act as amended (5 U.S.C. 552), the Commission's proposed interim regulations under that Act (39 FR 30298), and the provisions of section 6(a)(2) of the CPSA (15 U.S.C. 2055(a)(2)).

Written submissions and any accompanying data or material should be submitted, preferably in five copies, addressed to the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. Comments may be supported by a memorandum or brief.

Interested persons will be afforded an opportunity to make an oral presentation of data, views, or arguments on any aspect of the proposed standard on June 7, 1978, at 9:30 a.m., in the Commission hearing room, third floor, 1111 18th Street NW., Washington, D.C.

The Commission's Procedural Regu-

lations for Oral Presentations Concerning Proposed Consumer Product Safety Rules (16 CFR Part 1109) will govern this proceeding.

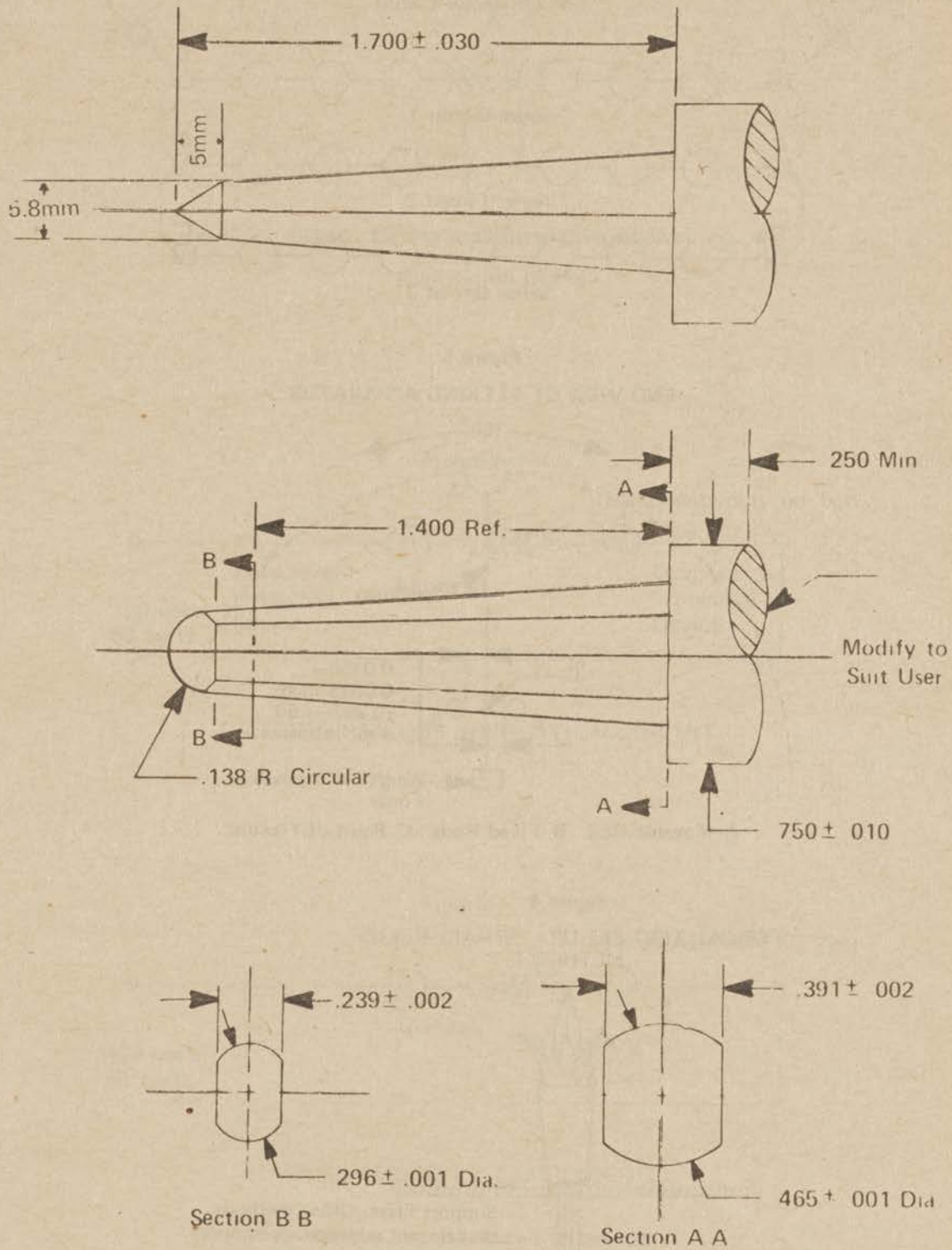
Those wishing to make oral presentations should notify the Office of the Secretary, 202-634-7700 by May 30, 1978. In addition, a summary or copy of the presentation, preferably in 5 copies is to be submitted to the Office of the Secretary by June 2, 1978.

The official transcript of the oral presentations of data, views, or arguments, any written comments that are received, and all other material which the Commission has that is relevant to this proceeding may be seen in, or copies obtained from the Office of the Secretary, third floor, 1111 18th Street NW., Washington, D.C. 20207.

Dated: April 28, 1978.

SADYE DUNN,
Acting Secretary, Consumer
Product Safety Commission.

Figure 1
PROBE



Note. All dimensions are in inches unless otherwise specified

Figure 5

TYPICAL TEST SET UP – STRAIN RELIEF
METHOD 2

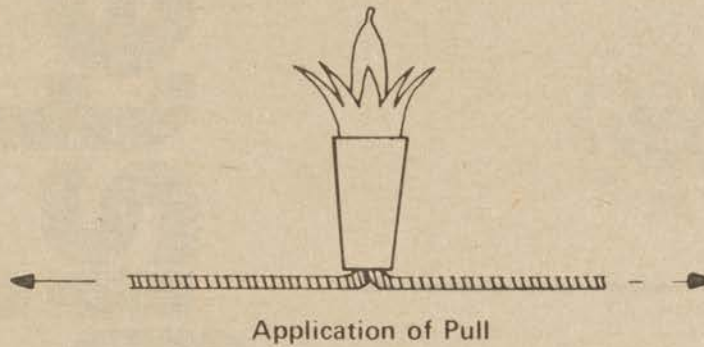
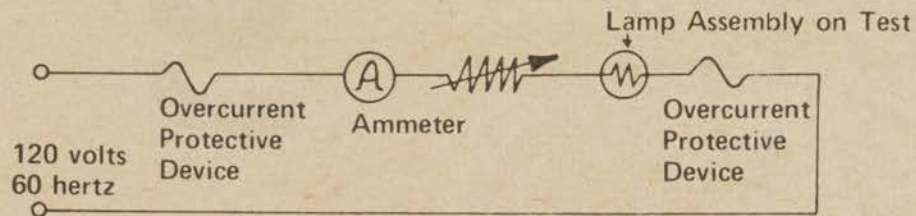
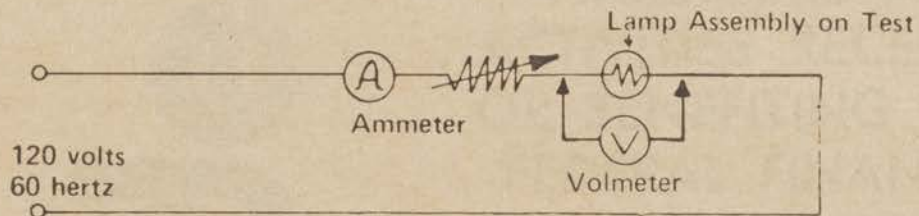


Figure 6



CASCADE FAILURE SIMULATION CIRCUIT

Figure 7



LAMP ASSEMBLY TEST CIRCUIT

[FR Doc. 78-12005 Filed 5-2-78; 8:45 am]

Figure 1

Typical test set up for strain relief

Figure 1 shows a typical test set up for strain relief.



Figure 1 shows a typical test set up for strain relief.

Figure 1 shows a typical test set up for strain relief.

Figure 2

Figure 2 shows a typical test set up for strain relief.



Figure 2 shows a typical test set up for strain relief.

Figure 2 shows a typical test set up for strain relief.

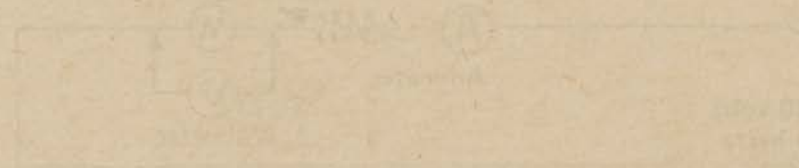


Figure 2 shows a typical test set up for strain relief.

Figure 2 shows a typical test set up for strain relief.

Figure 2 shows a typical test set up for strain relief.

Figure 2 shows a typical test set up for strain relief.

WEDNESDAY, MAY 3, 1978

PART IV



VETERANS ADMINISTRATION



NONDISCRIMINATION ON BASIS OF HANDICAP IN PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITING FROM FEDERAL FINANCIAL ASSISTANCE

Proposed Rules

Register
of
Proposed
Rules

[8320-01]

VETERANS ADMINISTRATION

[38 CFR Part 18d]

NONDISCRIMINATION ON THE BASIS OF
HANDICAP IN PROGRAMS AND ACTIVITIES
RECEIVING OR BENEFITING FROM FEDERAL
FINANCIAL ASSISTANCE

Proposed Regulations

AGENCY: Veterans Administration.

ACTION: Proposed Regulations.

SUMMARY: These proposed regulations, which apply to all recipients of Federal financial assistance from the VA (Veterans Administration), are intended to ensure that their programs and activities are operated without discrimination on the basis of handicap. The regulations define and forbid acts of discrimination against qualified handicapped individuals in employment and in the operation of programs and activities receiving assistance from the VA. As employers, recipients must make reasonable accommodation to the handicaps of applicants and employees unless the accommodation would cause the employer undue hardship. As providers of services, recipients are required to make programs and activities operated in existing facilities accessible to handicapped persons, to ensure that new facilities are constructed so as to be readily accessible to handicapped persons, and to operate their programs in a nondiscriminatory manner. These proposed regulations implement the Rehabilitation Act of 1973.

DATES: Comments must be received on or before July 3, 1978. The proposed effective date will be the date the final requirements are published in the FEDERAL REGISTER.

ADDRESSES: Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, D.C. 20420. Comments will be available for inspection at the address shown above during normal business hours until July 12, 1978.

FOR FURTHER INFORMATION
CONTACT:

Charles Clark, Veterans Administration, Office of Human Goals (09), 1425 K Street NW., Room 1116, Washington, D.C. 20420, 202-389-2012.

SUPPLEMENTARY INFORMATION: Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 704, provides that "No otherwise qualified handicapped individual . . . shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

Under Executive Order 11914 (41 FR 17871, April 29, 1976) HEW (Department of Health, Education, and Welfare) was required to issue general standards for other agencies and departments to follow in writing their regulations to implement section 504. The standards were published at 43 FR 2132, January 13, 1978. Generally, the standards set forth enforcement procedures, standards for determining which persons are handicapped, and guidelines for determining what practices are discriminatory.

The VA's proposed regulations are similar to the regulations issued by HEW (45 CFR Part 84). Changes were made to meet specific organizational, procedural or program requirements of the VA. Some recipients will be subject to the regulations of both the VA and HEW. To eliminate the duplication it is anticipated that a delegation of section 504 responsibility will be effected between the two agencies. It is expected that the delegation will parallel the delegations of responsibility with regard to title VI of the Civil Rights Act of 1964 that are currently in effect between the VA and HEW. Under the title VI delegations of responsibility, HEW has responsibility for institutions of higher learning, public schools, hospitals, and other health facilities, and the VA is responsible for proprietary schools.

Appendix A lists the VA programs which are subject to the requirements of section 504. Although the application of section 504 may seem rather inappropriate with regard to such programs as burial benefits or programs designed to assist certain disabled veterans (specially adapted housing and automobiles and adaptive equipment), it must be remembered that the law applies to employment practices of recipients as well as the provision of services.

ADDITIONAL COMMENT INFORMATION

Interested persons are invited to submit written comments, suggestions or objections regarding the proposal to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, D.C. 20420. All written comments received will be available for public inspection at the above address only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until July 12, 1978. Any person visiting Central Office for the purpose of inspecting any such comments will be received by the Central Office Veterans Services Unit in room 132. Such visitors to any field station will be informed that the records are available for inspection only in Central Office and furnished the address and the above room number.

Approved: April 27, 1978.

By the direction of the Administrator.

RUFUS H. WILSON,
Deputy Administrator.

A new Part 18d is added to read as follows:

PART 18d—NONDISCRIMINATION ON THE
BASIS OF HANDICAP IN PROGRAMS AND
ACTIVITIES RECEIVING OR BENEFITING
FROM FEDERAL FINANCIAL ASSISTANCE

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Appendix A—Statutory Provisions to Which This Part Applies.

AUTHORITY: Sec. 504, Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 704); E.O. 11914, 41 FR 17871, April 29, 1976)

Subpart A—General Provisions

§ 18d.1 Purpose.

The purpose of this part is to effectuate section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.

§ 18d.2 Application.

This part applies to each recipient of Federal financial assistance from the Veterans Administration and to each program or activity that receives or benefits from such assistance.

18d.3 Definitions.

As used in this part, the term: (a) "The Act" means the Rehabilitation Act of 1973, Pub. L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 29 U.S.C. 794.

(b) "Section 504" means section 504 of the Act.

(c) "Education of the Handicapped Act" means that statute as amended by the Education for all Handicapped Children Act of 1975, Pub. L. 94-142, 20 U.S.C. 1401 et seq.

(d) "Agency" means the Veterans Administration.

(e) "Administrator" means the Administrator of Veterans Affairs.

(f) "Recipient" means any State or its political subdivision, any instrumentality or a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

(g) "Applicant for assistance" means one who submits an application, request, or plan required to be approved by an Agency official or by a recipient as a condition to eligibility for Federal financial assistance.

(h) "Federal financial assistance" means any grant, loan, contract (other than a procurement contract of or a contract insurance or guaranty), or any other arrangement by which the Agency provides or otherwise makes available assistance in the form of:

(1) Funds, including funds extended to any entity for payment to or on behalf of students admitted to that entity, extended directly to those students for payment to that entity, or extended directly to those students contingent upon their participation in a program of education or training of that entity;

(2) Services of Federal personnel; or

(3) Real and personal property or any interest in or use of such property, including:

(i) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

(i) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

(j) "Handicapped person." (1) Handicapped persons means any person who:

(i) Has a physical or mental impairment which substantially limits one or more major life activities;

(ii) Has a record of such an impairment; or

(iii) Is regarded as having such an impairment.

(2) As used in paragraph (j)(1) of this section; the phrase:

(i) "Physical or mental impairment" means:

(A) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs including speech organs; respiratory; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

(B) Any mental or psychological disorder, such as mental retardation; organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(ii) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(iii) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(iv) "Is regarded as having an impairment" means:

(A) Has a physical or mental impairment that does not substantially limit major life activities but is treated by a recipient as constituting such a limitation;

(B) Has none of the impairments defined in paragraph (j)(2)(i) of this section, but is treated by a recipient as having such an impairment.

(k) "Qualified handicapped person" means:

(1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question;

(2) With respect to elementary, secondary, or adult educational services, a handicapped person:

(i) Of an age during which nonhandicapped persons are provided such services;

(ii) Of any age during which it is mandatory under State law to provide

such services to handicapped persons; or

(iii) To whom a State is required to provide a free appropriate public education under section 612 of the Education of the Handicapped Act; and

(3) With respect to postsecondary and vocational education services, a handicapped person who meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity;

(4) With respect to training in Veterans Administration health care facilities, a handicapped person who with reasonable accommodation can function within facility requirements for patient and staff safety and well being;

(5) With respect to other services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(l) "Handicap" means any condition or characteristic that renders a person a handicapped person as defined in paragraph (j) of this section.

§ 18d.4 Discrimination prohibited.

(a) *General.* No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.

(b) *Discriminatory actions prohibited.* (1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program;

(vi) Deny a qualified handicapped person the opportunity to participate

as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

(2) Aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and non-handicapped persons, but must give handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.

(3) Despite the existence of separate or different programs or activities provided in accordance with this part, a recipient may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different.

(4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration that:

(i) Have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap.

(ii) Defeat or substantially impair accomplishment of the objectives of the recipient's program with respect to handicapped persons, or

(iii) Perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(5) In determining the site or location of a facility, an applicant for assistance or a recipient may not make selections that:

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity that receives or benefits from Federal financial assistance, or

(ii) Defeat or substantially impair the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(6) As used in this section, the aid, benefit, or service provided under a program or activity receiving or benefiting from Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance.

(c) *Programs limited by Federal law.* The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handi-

capped persons is not prohibited by this part.

§ 18d.5 Assurances required.

Assurances required. An applicant for Federal financial assistance for a program or activity to which this part applies shall submit an assurance on a form specified by the Administrator, that the program will be operated in compliance with this part.

(b) *Duration of obligation.* (1) When Federal financial assistance is extended in the form of real property or structures on the property, the assurance will obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for the purpose for which Federal financial assistance is extended or for another purpose involving the provisions of similar services or benefits.

(2) Where Federal financial assistance is extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases the assurance will obligate the recipient for the period during which Federal financial assistance is extended.

(c) *Extent of application to institution or facility.* An assurance shall apply to the entire institution or facility. The Administrator may waive this requirement if the institution or facility can establish that the practices in designated parts and programs will not affect its practices in the program for which Federal financial assistance is being received or requested. If the assistance is being received or requested for the construction of a facility or part of a facility, the assurance shall apply to the entire facility and to facilities operated by the institution or facility.

(d) *Outside individuals or organizations.* A recipient shall not use the services of an individual or organization that discriminates against the handicapped or permit such an individual or organization to use its facilities. The recipient shall provide the Administrator with written assurance from individuals and organizations that such discrimination will not take place while they are providing services for the recipient or using his or her facilities.

(e) *Covenants.* (1) Where Federal financial assistance is provided in the form of real property or interest in the property from the Agency, the instrument effecting or recording this transfer shall contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another pur-

pose involving the provision of similar services or benefits.

(2) Where no transfer of property is involved but property is purchased or improved with Federal financial assistance, the recipient shall agree to include the covenant described in paragraph (b)(2) of this section in the instrument effecting or recording any subsequent transfer of the property.

(3) Where Federal financial assistance is provided in the form of real property or interest in the property from the Agency, the covenant shall also include a condition coupled with a right to be reserved by the Agency to revert title to the property if there is a breach of the covenant. If a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on the property for the purpose for which the property was transferred, the Administrator may, upon request of the transferee and if necessary to accomplish such financing and upon such conditions as he or she considers appropriate, agree to forbear the exercise of the right to revert title as long as the lien of the mortgage or other encumbrance remains effective.

§ 18d.6 Remedial action, voluntary action and self-evaluation.

(a) *Remedial action.* (1) If the Administrator finds that a recipient has discriminated against qualified persons on the basis of handicap in violation of section 504 or this part, the recipient shall take such remedial action as the Administrator considers necessary to overcome the effects of the discrimination.

(2) Where a recipient is found to have discriminated against qualified persons on the basis of handicap in violation of section 504 or this part and where another recipient exercises control over the recipient that has discriminated, the Administrator, where appropriate, may require either or both recipients to take remedial action.

(3) The Administrator may, where necessary to overcome the effects of discrimination in violation of section 504 or this part, require a recipient to take remedial action with respect to:

(i) Handicapped persons who are no longer participants in the recipient's program but who were participants in the program when such discrimination occurred; or

(ii) Handicapped persons who would have been participants in the program had the discrimination not occurred.

(b) *Voluntary action.* A recipient may take steps, in addition to any action that is required by this part, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified handicapped persons.

(c) *Self-evaluation.* (1) A recipient shall, within 1 year of the effective date of this part:

(i) Evaluate with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices and the effects of the policies and practices that do not or may not meet the requirements of this part;

(ii) Modify, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, any policies and practices that do not meet the requirements of this part; and

(iii) Take, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

(2) A recipient that employs fifteen or more persons shall, for at least 3 years following completion of the evaluation required under paragraph (c)(1) of this section, maintain on file, make available for public inspection, and provide to the Administrator upon request:

(i) A list of the interested persons consulted;

(ii) A description of areas examined and any problems identified; and

(iii) A description of any modifications made and of any remedial steps taken.

§ 18d.7 Designation of responsible employee.

A recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with this part.

§ 18d.8 Notice.

(a) A recipient that employs fifteen or more persons shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of section 504 and this part. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment, or employment in, its programs and activities. The notification shall also include an identification of the responsible employee designated under § 18d.7. A recipient shall make the initial notification required by this paragraph within 90 days of the effective date of this part. Methods of initial and continuing notification may include the posting of notices, publication in news-

papers and magazines, placement of notices in recipient's publication, and distribution of memorandums or other written communications.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this section either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

§ 18d.9 Administrative requirements for certain recipients.

(a) The Administrator may require any recipient with fewer than fifteen employees, or any class of such recipients, to comply with §§ 18d.7 and 18d.8 in whole or in part, when the Administrator finds a violation of this part or finds that such compliance will not significantly impair the ability of the recipient or class of recipients to provide benefits or services.

(b) The Administrator may at his or her discretion exempt certain recipients from compliance with §§ 18d.6(c) and 18d.7.

§ 18d.10 Effect of State or local law or other requirements and effect of employment opportunities.

(a) The obligation to comply with this part is not obviated or alleviated by the existence of any State law or other requirement that, on the basis of handicap, imposes prohibitions or limits upon the eligibility of qualified handicapped persons to receive services or to practice any occupation or profession.

(b) The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for handicapped persons than for nonhandicapped persons.

Subpart B—Employment Practices

§ 18d.11 Discrimination prohibited.

(a) *General.* (1) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity to which this part applies.

(2) A recipient shall make all decisions concerning employment under any program or activity to which this part applies in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(3) A recipient may not participate in a contractual or other relationship that subjects qualified handicapped applicants or employees to discrimination in employment. The relationships referred to in this section include relationships with employment and referral agencies, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.

(b) *Specific activities.* Nondiscrimination in employment applies to:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, award of tenure, demotion, transfer, layoff, and rehiring;

(3) Rates of pay or other forms of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including social or recreational programs; and

(9) Any other term, condition, or privilege of employment.

(c) *Collective bargaining agreements.* A recipient's obligation to comply with this subpart is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

§ 18d.12 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of a handicapped applicant or employee in order to determine if he or she is qualified to perform essential job skills unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

(b) Reasonable accommodation may include:

(1) Making facilities used by employees readily accessible to and usable by handicapped persons; and

(2) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters and other similar actions.

(c) In determining under paragraph (a) of this section whether an accommodation would impose an undue

hardship on the operation of a recipient's program, factors to be considered include:

(1) The overall size of the recipient's program with respect to number of employees, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's workforce; and

(3) The nature and cost of the accommodation needed.

(d) A recipient may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

§ 18d.13 Employment criteria.

(a) A recipient may not use any employment test or other selection criterion that screens out or tends to screen out handicapped persons or any class of handicapped persons unless:

(1) The test score or other selection criterion, as used by the recipient, is shown to be job-related for the position in question, and

(2) Alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons are not shown by the Administrator to be available.

(b) A recipient shall select and administer tests concerning employment to best ensure that, when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than reflecting the applicant's or employee's impaired sensory, manual, or speaking skills (except when those skills are the factors that the test purports to measure).

§ 18d.14 Preemployment inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct a medical examination or may not inquire of an applicant as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. A recipient may, however, inquire as to an applicant's ability to perform job-related functions.

(b) A recipient may invite applicants for employment to indicate whether and to what extent they are handicapped if:

(1) It is taking remedial action to correct the effects of past discrimination under § 18d.6(a);

(2) It is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its Federally assisted program or activity under § 18d.6(b); or

(3) It is taking affirmative action under section 503 of the Act.

(i) The recipient shall state clearly on any written questionnaire used for this purpose or make clear orally, if no written questionnaire is used, that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; and

(ii) The recipient shall state that:

(A) The information is being requested on a voluntary basis;

(B) The information will be kept confidential as provided in paragraph (d) of this section;

(C) Refusal to provide the information will not subject the applicant or employee to any adverse treatment; and

(D) The information will be used only in accordance with this part.

(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty, if:

(1) All entering employees are subjected to such an examination regardless of handicap; and

(2) The results of such an examination are used only in accordance with the requirements of this part.

(d) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be given confidentiality as medical records, except that:

(1) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodations;

(2) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and

(3) Government officials investigating compliance with the Act shall be provided relevant information upon request.

Subpart C—Program Accessibility

§ 18d.21 Discrimination prohibited.

No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies.

§ 18d.22 Existing facilities.

(a) *Program accessibility.* A recipient shall operate each program or activity to which this part applies so that the program or activity, when viewed in its entirety, is readily accessible to handicapped persons. This

paragraph does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

(b) *Methods.* A recipient may comply with the requirement of paragraph (a) of this section through redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of health, or other social services at alternate accessible sites, alteration of existing facilities and construction of new facilities in conformance with § 18d.23 or any other methods that make its program or activity accessible to handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in making its programs or activities readily accessible to handicapped persons. In choosing among available methods for complying with paragraph (a) of this section, a recipient shall give priority to methods that offer programs and activities to handicapped persons in the most integrated setting appropriate.

(c) *Small health, welfare or other social service providers, and recipients that operate other than educational programs or activities.* If a recipient with fewer than fifteen employees, finds after consultation with a handicapped person seeking its services, that there is no method of complying with paragraph (a) of this section other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the qualified handicapped person to other providers whose services are accessible.

(d) *Time period.* A recipient shall comply with paragraph (a) of this section within 60 days of the effective date of this part except that when structural changes in facilities are necessary, these changes shall be made as soon as possible, but not later than 3 years after the effective date of this part.

(e) *Transition plan.* If structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop a transition plan within 6 months of the effective date of this part. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan shall be available for public inspection. The plan shall, at a minimum:

(1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its program or activity to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve full pro-

gram accessibility and, if the time period of the transition plan is longer than 1 year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the person responsible for implementation of the plan.

(f) *Notice.* The recipient shall implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information concerning the existence and location of services, activities, and facilities that are accessible to and usable by handicapped persons.

§ 18d.23 New construction.

(a) *Design and construction.* Each facility or part of a facility constructed by, on behalf of, or for the use of a recipient, after the effective date of this part, shall be designed and constructed so that the facility or part of the facility is readily accessible to and usable by handicapped persons.

(b) *Alteration.* Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this part in a manner that effects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered so that the altered portion of the facility is readily accessible to and usable by handicapped persons.

(c) *American National Standards Institute accessibility standards.* Design, construction, or alteration of facilities in conformance with the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," published by the American National Standards Institute, Inc. (ANSI A117.1-1961(R1971)),¹ which is incorporated by reference in this part, shall constitute compliance with paragraphs (a) and (b) of this section. Departures from particular requirements of those standards by the use of other methods shall be permitted when it is clearly evident that equivalent access to the facility is provided.

Subpart D—Elementary, Secondary, and Adult Education

§ 18d.31 Application.

This Subpart D applies to elementary, secondary, and adult education programs and activities that receive or benefit from Federal financial assistance.

§ 18d.32 Location and notification.

A recipient that operates a public elementary or secondary educational program shall annually:

(a) Undertake to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education; and

(b) Notify handicapped persons and their parents or guardians of the recipient's duty under this subpart.

§ 18d.33 Free appropriate public education.

(a) *General.* A recipient that operates a public elementary or secondary education program shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap.

(b) *Appropriate education.* (1) The provision of an appropriate education is the provision of regular or special education and related aids and services that:

(i) Are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met; and

(ii) Are based upon adherence to procedures that satisfy the requirements of §§ 18d.34, 18d.35, and 18d.36.

(2) Implementation of an individualized education program developed in accordance with the Education of the Handicapped Act is one means of meeting the standard established in paragraph (b)(1)(i) of this section.

(3) A recipient may place a qualified handicapped person in or refer that person to a program other than the one that it operates as its means of carrying out the requirements of this subpart. The recipients remain responsible for ensuring that the requirements of this subpart are met with respect to any qualified handicapped person so placed or referred.

(c) *Free education.* (1) The provision of a free education is the provision of educational and related services without cost to the handicapped person or to his or her parents or guardian, except for those fees that are imposed on nonhandicapped persons or their parents or guardian. It may consist either of the provision of free services if a recipient places a handicapped person in or refers that person to a program not operated or, by the recipient as its means of carrying out the requirements of this subpart, of payment for the costs of the program. Funds available from any public or private agency may be used to meet the requirements of this subpart. Nothing in this section shall be construed to relieve an insurer or similar third party from an otherwise valid obligation to provide or pay for services provided to a handicapped person.

(2) If a recipient places a handicapped person in or refers that person to a program not operated by the re-

cipient as its means of carrying out the requirements of this subpart, the recipient shall ensure that adequate transportation to and from the program is provided at no greater cost than would be incurred by the person or his or her parents or guardian if the person were placed in the program operated by the recipient.

(3) If placement in a public or private residential program is necessary to provide free appropriate public education to a handicapped person because of his or her handicap, the program including non-medical care and room and board, shall be provided at no cost to the person or his or her parents or guardian.

(4) If a recipient has made available, in conformance with this section and § 18d.34, a free appropriate public education to a handicapped person and the person's parents or guardian chooses to place the person in a private school, the recipient is not required to pay for the person's education in the private school. Disagreements between a parent or guardian and a recipient regarding whether the recipient has made such a program available or regarding the question of financial responsibility are subject to the due process procedures of § 18d.36.

(d) *Compliance.* A recipient may not exclude any qualified handicapped person from a public elementary or secondary education after the effective date of this part. A recipient that is not, on the effective date of this part, in full compliance with the requirements of paragraphs (a) through (c) of this section shall meet those requirements at the earliest practicable time, but not later than September 1, 1978.

§ 18d.34 Educational setting.

(a) *Academic setting.* A recipient shall educate, or shall provide for the education of, each qualified handicapped person in its jurisdiction with persons who are not handicapped to the extent appropriate to the needs of the handicapped person. A recipient shall place a handicapped person in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. If a recipient places a person in a setting other than the regular educational environment, it shall consider the proximity of the alternate setting to the person's home.

(b) *Nonacademic settings.* In providing or arranging for the provision of nonacademic and extracurricular services and activities, a recipient shall ensure that handicapped persons participate with nonhandicapped persons in those activities and services to the

¹Copies obtainable from American National Standards Institute, Inc., 1430 Broadway, New York, N.Y. 10018.

maximum extent appropriate to the needs of the handicapped person in question.

(c) *Comparable facilities.* If a recipient in compliance with paragraph (a) of this section operates a facility for handicapped persons, the recipient shall ensure that the facility and the services and activities provided in that facility are comparable to the other facilities, services, and activities of the recipient.

§ 18d.35 Evaluation and placement.

(a) *Preplacement evaluation.* A recipient that operates a public elementary or secondary education program shall conduct an evaluation of any qualified person who, because of handicap, needs or is believed to need special education or related services before taking any action concerning the initial placement of the person in a regular or special program and any subsequent change in placement.

(b) *Evaluation procedures.* Elementary, secondary, and adult education programs and activities that receive or benefit from Federal financial assistance shall establish standards and procedures which ensure that:

(1) Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer;

(2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and

(3) Tests are selected and administered to best ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factor that the test purports to measure).

(c) *Placement procedure.* In interpreting evaluation data and in making placement decisions, a recipient shall:

(1) Draw upon information from a variety of sources;

(2) Establish procedures to ensure that information obtained from all sources is documented and carefully considered;

(3) Ensure that the placement decision is made by a group of persons, including persons knowledgeable about the student, the meaning of the evaluation data and the placement options; and

(4) Ensure that the placement decision is made in accordance with § 18d.34.

(d) *Reevaluation.* A recipient to which this section applies shall establish procedures, in accordance with paragraph (b) of this section, for periodic reevaluation of students who have been provided special education and related services. A reevaluation procedure consistent with the Education for the Handicapped Act is one means of meeting this requirement.

§ 18d.36 Procedural safeguards.

(a) A recipient that operates a public elementary or secondary education program shall implement a system of procedural safeguards with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services. The system shall include:

(1) Notice;

(2) An opportunity for the parents or guardian of the person to examine relevant records;

(3) An impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel; and

(4) A review procedure.

(b) Compliance with the procedural safeguards of section 615 of the Education of the Handicapped Act is one means of meeting this requirement.

§ 18d.37 Nonacademic services.

(a) *General.* (1) Elementary, secondary, and adult education programs that receive or benefit from Federal financial assistance shall provide nonacademic and extracurricular services and activities in a manner which gives handicapped students an equal opportunity for participation in these services and activities.

(2) Nonacademic and extracurricular services and activities may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups and clubs sponsored by the recipient, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the recipient and assistance in making available outside employment.

(b) *Counseling services.* Elementary, secondary, and adult education programs that receive or benefit from Federal financial assistance and that provide personal, academic, or vocational counseling, guidance, or placement services to its students shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities.

(c) *Physical education and athletics.* In providing physical education courses and athletics and similar pro-

grams and activities to any of its students, an elementary, secondary, or adult education program or activity that receives or benefits from Federal financial assistance may offer to handicapped students physical education and athletic activities that are separate or different from those offered to nonhandicapped students only if:

(1) Separation or differentiation is consistent with § 18d.34; and

(2) No qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

§ 18d.38 Adult education programs.

A recipient that operates an adult education program or activity may not, on the basis of handicap, exclude qualified handicapped persons from the program or activity. The recipient shall take into account the needs of these persons in determining the aid, benefits, or services to be provided under the program or activity.

§ 18d.39 Private education programs.

(a) A recipient that operates a private elementary or secondary education program may not on the basis of handicap, exclude a qualified handicapped person from that program if the person can, with minor adjustments, be provided an appropriate education, as defined in § 18d.33(b)(1), within the recipient's program.

(b) A recipient may not charge more for providing an appropriate education for handicapped persons than to nonhandicapped persons except to the extent that any additional charge is justified by a substantial increase in cost to the recipient.

(c) A recipient to which this section applies that operates special education programs shall operate those programs in accordance with §§ 18d.35 and 18d.36. Each recipient to which this section applies is subject to §§ 18d.34, 18d.37, and 18d.38.

Subpart E—Postsecondary Education

§ 18d.41 Application.

This Subpart E applies to postsecondary education programs and activities that receive or benefit from Federal financial assistance.

§ 18d.42 Admissions and recruitment.

(a) *General.* Qualified handicapped persons may not, on the basis of handicap, be denied admission or be subjected to discrimination in admission or recruitment by a recipient.

(b) *Admission.* In administering its admission policies, a recipient:

(1) May not apply limitations on the number or proportion of handicapped persons who may be admitted;

(2) May not use any test or criterion for admission that has a dispropor-

tionate, adverse effect on handicapped persons or any class of handicapped persons unless:

(i) The test or criterion, as used by the recipient, has been validated as a predictor of success in the education program or activity in question; and

(ii) Alternate tests or criteria that have a less disproportionate, adverse effect are not shown by the Administrator to be available;

(3) Shall assure itself that:

(i) Admissions tests are selected and administered to best ensure that, when a test is administered to an applicant who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the applicant's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure);

(ii) Admissions tests that are designed for persons with impaired sensory, manual, or speaking skills are offered as often and in as timely a manner as are other admissions tests; and

(iii) Admissions tests are administered in facilities that, on the whole, are accessible to handicapped persons; and

(4) Except as provided in paragraph (c) of this section, may not inquire as to whether an applicant for admission is a handicapped person. After admission, the recipient may inquire on a confidential basis as to handicaps that may require accommodation.

(c) *Preadmission inquiry exception.* When a recipient is taking remedial action to correct the effects of past discrimination under § 18d.6(a) or when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its Federally assisted program or activity under § 18d.6(b), the recipient may invite applicants for admission to indicate whether and to what extent they are handicapped.

(1) The recipient shall state clearly on any written questionnaire used for this purpose or make clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary action efforts; and

(2) The recipient shall state clearly that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the applicant to any adverse treatment, and that it will be used only in accordance with this part.

(d) *Validity studies.* For the purpose of paragraph (b)(2) of this section, a recipient may base prediction equa-

tions on first year grades, but shall conduct periodic validity studies against the education program or activity in question to monitor the general validity of the test scores.

§ 18d.43 General treatment of students.

(a) No qualified handicapped student shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any academic, research, occupational training, housing, health insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular, or other program or activity operated by a recipient.

(b) A recipient that considers participation by students in education programs or activities not operated wholly by the recipient as part of, or equivalent to, an education program or activity operated by the recipient shall assure itself that the other education program or activity, as a whole, provides an equal opportunity for the participation of qualified handicapped persons.

(c) A recipient shall operate its programs and activities in the most integrated setting appropriate.

§ 18d.44 Academic adjustments.

(a) *Academic requirements.* A recipient shall make necessary modifications to its academic requirements to ensure that these requirements do not discriminate or have the effects of discriminating, on the basis of handicap, against a qualified handicapped applicant or student. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted. Academic requirements that the recipient can demonstrate are essential to the program of instruction being pursued by the student or to any directly related licensing requirements will not be regarded as discriminatory within the meaning of this section.

(b) *Other rules.* A recipient may not impose upon handicapped students other rules, such as the prohibition of tape recorders in classrooms or guide dogs in campus buildings, that limit the participation of handicapped students in the recipient's education program or activity.

(c) *Course examinations.* In its course examinations or other procedures for evaluating students' academic achievement in its program, a recipient shall provide methods for evaluating the achievement of students who have a handicap that impairs sensory, manual, or speaking skills that will best ensure that the re-

sults of the evaluation represent the students' achievement in the course, rather than reflect the students' impaired sensory, manual, or speaking skills (except where such skills are the factors that the test purports to measure).

(d) *Auxiliary aids.* (1) A recipient shall ensure that no qualified handicapped student is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under the education program or activity operated by the recipient because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills.

(2) Auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions. Recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

§ 18d.45 Housing.

(a) *Housing provided by a recipient.* A recipient that provides housing to its nonhandicapped students shall provide comparable, convenient, and accessible housing to qualified handicapped students at the same cost as to others. At the end of the transition period provided for in § 18d.22(e), this housing shall be available in sufficient quantity and variety so that the scope of handicapped students' choice of living accommodations is, as a whole, comparable to that of nonhandicapped students.

(b) *Other housing.* A recipient that assists any agency, organization, or person in making housing available to any of its students shall assure itself that such housing is, as a whole, made available in a manner that does not result in discrimination on the basis of handicap.

§ 18d.46 Financial and employment assistance to students.

(a) *Provisions of financial assistance.* (1) In providing financial assistance to qualified handicapped persons, a recipient may not:

(i) On the basis of handicap, provide less assistance than is provided to nonhandicapped persons, limit eligibility for assistance, or otherwise discriminate; or

(ii) Assist any entity or person that provides assistance to any of the recipient's students in a manner that discriminates against qualified handicapped persons on the basis of handicap.

(2) A recipient may administer or assist in the administration of scholar-

ships, fellowships, or other forms of financial assistance established under wills, trusts, bequests, or similar legal instruments that require awards to be made on the basis of factors that discriminate or have the effect of discriminating on the basis of handicap only if the overall effect of the award of scholarships, fellowships, and other forms of financial assistance is not discriminatory on the basis of handicap.

(b) *Assistance in making available outside employment.* A recipient that assists any agency, organization, or person in providing employment opportunities to any of its students shall assure itself that these employment opportunities, as a whole, are made available in a manner that would not violate Subpart B of this part if the opportunities were provided by the recipient.

(c) *Employment of students by recipients.* A recipient that employs any of its students may not do so in a manner that violates Subpart B of this part.

§ 18d.47 Nonacademic services.

(a) *Physical education and athletics.* (1) In providing physical education courses and athletics and similar programs and activities to any of its students, a recipient may not discriminate on the basis of handicap.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different only if separation or differentiation is consistent with the requirements of § 18d.43(c) and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

(b) *Counseling and placement services.* A recipient that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are non-handicapped students with similar interests and abilities. This requirement does not preclude a recipient from providing factual information about licensing and certification requirements that may present obstacles to handicapped persons in their pursuit of particular careers.

(c) *Social organizations.* A recipient that provides significant assistance to fraternities, sororities, or similar organizations shall assure itself that the membership practices of these organizations do not permit discrimination otherwise prohibited by this subpart.

Subpart F—Health and Social Services

§ 18d.51 Application.

This Subpart F applies to health, and other social service programs and activities that receive or benefit from Federal financial assistance.

§ 18d.52 Health and other social services.

(a) *General.* In providing health, or other social services or benefits, a recipient may not, on the basis of handicap:

(1) Deny a qualified handicapped person these benefits or services;

(2) Give a qualified handicapped person an opportunity to receive benefits or services that is not equal to that offered nonhandicapped persons;

(3) Provide a qualified handicapped person with benefits or services that are not as effective (as defined in § 18d.4(b)(2)) as the benefits or services provided to others;

(4) Provide benefits or services in a manner that limits or has the effect of limiting the participation of qualified handicapped persons; or

(5) Provide different or separate benefits or services to handicapped persons except where necessary to provide qualified handicapped persons with benefits and services that are as effective as those provided to others.

(b) *Notice.* A recipient that provides notice concerning benefits or services or written material concerning waivers of rights or consent to treatment shall ensure that qualified handicapped persons, including those with impaired sensory or speaking skills, are not denied effective notice because of their handicap.

(c) *Auxiliary aids.* (1) A recipient that employs fifteen or more persons shall provide appropriate auxiliary aids to persons with impaired sensory, manual, or speaking skills, where necessary to give these persons an equal opportunity to benefit from the service in question.

(2) The Administrator may require recipients with fewer than fifteen employees to provide auxiliary aids where the provision of aids would not significantly impair the ability of the recipient to provide its benefits or services.

(3) Auxiliary aids may include brailled and taped material, interpreters, and aids for persons with impaired hearing or vision.

§ 18d.53 Drug and alcohol addicts.

A recipient that operates a general hospital or outpatient facility may not discriminate, with regard to a drug or alcohol abuser or alcoholic who is suffering from a medical condition, in the

admission of that person for treatment of the medical condition, or in the treatment of the medical condition because of the person's drug or alcohol abuse or alcoholism.

§ 18d.54 Education of institutionalized persons.

A recipient that operates or supervises a program or activity for persons who are institutionalized because of handicap and is responsible for providing training shall ensure that each qualified handicapped person, as defined in § 18d.3(k)(2), in its program or activity is provided an appropriate education, as defined in § 18d.33(b). Nothing in this section shall be interpreted as altering in any way the obligations of recipients under subpart D.

Subpart G—Procedures

§ 18d.61 Procedures.

The procedural provisions applicable to title VI of the Civil Rights Act of 1964 apply to this part. These procedures are found in §§ 18.6 through 18.11 and Part 18b of this chapter.

APPENDIX A—STATUTORY PROVISIONS TO WHICH THIS PART APPLIES

1. Payments to State Homes (38 U.S.C. 641-643).
2. State home facilities for furnishing domiciliary, nursing home, and hospital care (38 U.S.C. 5031-5037).
3. Community nursing home care (38 U.S.C. 620).
4. Sharing of medical facilities, equipment, and information (38 U.S.C. 5051-5057).
5. Assistance in establishing new state medical schools, grants to affiliated medical schools; assistance to health manpower training institutions (38 U.S.C. ch. 82).
6. Approval of educational institutions (38 U.S.C. 104).
7. Medical care for survivors and dependents of certain veterans (38 U.S.C. 613).
8. Space and office facilities for representatives of State employment service (38 U.S.C. 244(4)).
9. Space and office facilities for representatives of recognized national service organizations (38 U.S.C. 3402(a)(2)).
10. Vocational rehabilitation, post-Vietnam era veterans educational assistance, veterans educational assistance, dependents educational assistance, and administration of educational assistance (38 U.S.C. chs. 31, 32, 34, 35 and 36 respectively).
11. Automobile and adaptive equipment for certain disabled veterans and members of the Armed Forces (38 U.S.C. ch. 39).
12. Specially adapted housing for disabled veterans (38 U.S.C. 801-805).
13. Veterans housing—direct loans (38 U.S.C. 1811).
14. Burial benefits (38 U.S.C. ch. 23).

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WEDNESDAY, MAY 3, 1978
PART V



DEPARTMENT OF
THE INTERIOR

Fish and Wildlife
Service

STATUS OF NATIVE
SPECIES PROTECTED BY
ENDANGERED SPECIES
CONVENTION

Advance Notice of Potential
Rulemaking

[4310-55]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Part 23]

STATUS OF NATIVE SPECIES PROTECTED BY
THE ENDANGERED SPECIES CONVENTIONAGENCY: Fish and Wildlife Service,
Interior.ACTION: Advance notice of potential
rulemaking.

SUMMARY: The Service is surveying the status of all species of wildlife native to the United States that are listed in Appendices I and II of the Endangered Species Convention in order to determine if they are appropriately listed. Each of the nations party to the convention is to conduct a similar survey and submit proposals for appropriate changes that will be considered at the next meeting of the Parties. This notice summarizes the preliminary results of the United States survey, and invites the public to supply information that will assist the Service in determining the status of certain native wildlife species. A public meeting will be held on May 31, 1978, in Washington, D.C. to discuss the issues raised in this survey.

DATES: The Service will consider all comments received by July 3, 1978.

ADDRESSES: Please send comments to the Director, U.S. Fish and Wildlife Service, Federal Wildlife Permit Office, Washington, D.C. 20240.

FOR FURTHER INFORMATION
CONTACT:

Dr. Richard L. Jachowski, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240, phone 202-254-8100.

SUPPLEMENTARY INFORMATION: The Convention on International Trade in Endangered Species of Wild Fauna and Flora has three appendices listing species that are subject to regulation. According to Article II of the Convention:

1. Appendix I shall include all species threatened with extinction which are or may be affected by trade. Trade in specimens of these species must be subject to particularly strict regulation in order not to endanger further their survival and must only be authorized in exceptional circumstances.

2. Appendix II shall include:

(a) all species which although not necessarily now threatened with extinction may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival; and

(b) other species which must be subject to regulation in order that trade in specimens of certain species referred to in sub-paragraph (a) of this paragraph may be brought under effective control.

3. Appendix III shall include all species which any Party identifies as being subject

to regulation within its jurisdiction for the purpose of preventing or restricting exploitation, and as needing the cooperation of other parties in the control of trade.

Appendices I and II were developed in 1973 when the Convention was negotiated at a plenipotentiary conference of 80 nations in Washington, D.C. The International Union for Conservation of Nature and Natural Resources (IUCN), which prepared the original draft of the Convention, also developed a list of wildlife species in need of protection. The final composition of Appendices I and II (containing about 419 and 264 taxa respectively) was negotiated at the Conference, with many nations proposing changes in the original list (41 FR 24367).

Subsequent changes in Appendices I and II were not made until the nations party to the Convention met in November 1976 in Berne, Switzerland. The 122 changes in the listed taxa made at Berne became effective on February 4, 1977, 90 days after their adoption. No further changes have occurred since the list of species in 50 CFR, Part 23 was published. (42 FR 10462).

The Parties decided to adopt criteria for adding or deleting species after reviewing the more than 600 proposals to amend Appendices I and II that were submitted in 1976. The criteria stress the need to consider both the biological status and the trade status of the species. The Service's proposed rule on the procedure for changing the appendices includes these criteria. (43 FR 12349). They are reprinted below.

§ 23.21 Criteria for amending the appendices.

(a) *Additions, general rule.* Species may only be added to Appendix I, II or III if they meet the following internationally agreed criteria. In determining the appropriate appendix in which a species should be included, the biological and trade status of the species should be evaluated together. Trade in this context means any import, export or re-export.

(b) *Additions to Appendix I.* Appendix I shall include species threatened with extinction which are or may be affected by trade.

(1) *Biological status.* To qualify for Appendix I, a species must be currently threatened with extinction. Information of any of the following types is required, in order of preference: (i) scientific reports on the population size or geographic range of the species based on single surveys; (ii) reports by reliable observers other than scientists on the population size or geographic range of the species over a number of years; or (iv) reports from various sources on habitat destruction, heavy trade or other potential causes of extinction. Genera are included if most of their species are threatened with extinction and if identification of individual species within the genus is difficult. The same applies to the listing of any smaller taxa within larger ones. If most of the smaller taxa are not threatened, but identification of individual species is difficult, the entire larger taxon should be placed on Appendix II. Species included on Appendix I because of difficulty in distinguishing them from threatened species in the same higher

taxon should be annotated as such in the appendix.

(2) *Trade status.* Species meeting the biological criteria should be listed in Appendix I if they are or may be affected by international trade. This includes any species that might be expected to be traded for any purpose, scientific or otherwise. Particular attention should be given to any species for which such trade might, over a period of time, involve numbers of specimens constituting a significant portion of the total population size necessary for the continued survival of the species. The biological status and trade status of a species are obviously related. When biological data show a species to be declining seriously, there need be only a probability of trade. When trade is known to occur, information on the biological status need not be as complete. This principle especially applies to groups of related species, where trade can readily shift from one species that is well-known to another for which there is little biological information.

(c) *Additions to Appendix II.* Appendix II shall include species which although not necessarily now threatened with extinction may become so unless trade in wildlife and plants of such species is subject to strict regulation in order to avoid utilization incompatible with their survival, and other species which must be subject to regulation in order that trade in such species of wildlife and plants may be brought under effective control.

(1) *Biological status.* To qualify for Appendix II, a species need not currently be threatened with extinction, but there should be some indication that it might become so. Such an indication might be a decreasing or very limited population size or geographic range of distribution. Information on biological status should be one of the types required for Appendix I species. Genera should be listed if some of their species are threatened and identification of individual species within the genus is difficult. The same should apply to listing any smaller taxa within larger ones.

(2) *Trade status.* Species meeting the biological criteria should be listed if they presently are subject to trade or are likely to become subject to trade. The latter situation can arise where heavy trade in one species is extended to include similar species if the demand grows or if supplies of the one species are depleted. The amount of trade that a species can sustain without threat of extinction generally will be greater for species in Appendix II than for those in Appendix I, so there should be evidence of actual or expected trade in such a volume as to constitute a potential threat to survival of the species. Appendix II serves in part as a monitoring tool to gather trade data. The monitoring of a species in Appendix II can indicate if similar species not listed in Appendix I or II are likely to be subject to trade.

(d) *Additions to Appendix III.* Appendix III shall include species which any party identifies as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation, and as needing the cooperation of other parties in the control of trade.

(e) *Deletions and transfers from Appendices I and II.* Species may only be deleted from Appendix I or II, or transferred from Appendix I to Appendix II if the following internationally agreed criterion is met. There must be positive scientific evidence

that the species can withstand the exploitation resulting from the removal of protection afforded by the present listing. This evidence must transcend informal or lay evidence of changing biological status and any evidence of commercial trade which may have been sufficient to require the species to be placed on an appendix initially. Such evidence should include at least a well-documented population survey, an indication of the population trend of the species, showing recovery sufficient to justify deletion or transfer, and an analysis of the potential for commercial trade in the species.

(f) *Deletions from Appendix III.* Any party that has submitted a species for inclusion in Appendix III may withdraw it at any time.

A Special Working Session was held in October 1977 in Geneva, Switzerland, to discuss certain issues concerning implementation of the Convention that the Parties were unable to resolve at their first meeting. The participants in the Special Working Session recommended that the Parties supply certain types of information in any future proposals to change Appendix I or II. The Service included these types of information in the requirements for petitions in the proposed rule on the procedure for changing the appendices (43 FR 12349). The participants also recommended that the Parties review

the species of wildlife listed in the current appendices in order to make any necessary corrections at the next meeting.

Under the terms of this review, each Party is to survey the status of all species of wildlife listed in Appendices I and II that are native to its country. In cases where a species occurs in more than one Party country, the Secretariat of the Convention has designated one of the Parties to coordinate the review. The Service identified 134 species of wildlife in Appendices I and II that are native to the United States, and published a notice in the *FEDERAL REGISTER* on March 6, 1978, requesting information on them (43 FR 9169). The Service also communicated this list to the Secretariat for purposes of coordination and to other countries with a request for information on species in common.

The Secretariat has requested that Parties submit formal proposals to amend Appendices I and II by August 15, 1978, in order that they may be considered at the next meeting of the Conference of the Parties. The meeting is to be held March 19-31, 1979, in San Jose, Costa Rica.

The purposes of the present notice are to announce the preliminary results of the survey of 134 wildlife species in the United States and to request additional comments and information. The present results are based on a study of all information available to the Service at the time this notice was prepared. It should be emphasized that the findings are preliminary and may be modified in light of significant new information.

Following receipt of additional information and comments, the Service will review these findings and prepare formal proposals to make appropriate changes in the appendices. Any proposals that the Service communicates to the Secretariat will be announced simultaneously as a proposed rulemaking in the *FEDERAL REGISTER*. Information and comments received subsequent to the proposed rulemaking will assist the Service in determining if its formal proposals should be modified before they are considered by the Parties. A final rulemaking will be published after the meeting of the Parties, announcing those amendments to Appendices I and II that the Parties adopt.

PROPOSED RULES

Summary of Recommendations
(See explanation at end of table)

Species	Current Appendix Listing	Recommended Appendix Listing	Basis for Recommendation
<u>MAMMALIA</u>			
<u>RODENTIA</u>			
<u>Heteromyidae</u>			
<u>Dipodomys phillipsii</u> <u>phillipsii</u> (Phillip's Kangaroo rat)	II	II	3
<u>CETACEA</u>			
<u>Eschrichtidae</u>			
<u>Eschrichtius robustus</u> (glaucus) (Gray whale)	I	I	1
<u>Balaenopteridae</u>			
<u>Balaenoptera borealis</u> (Sei whale)	I and II	I and II	1
<u>Balaenoptera musculus</u> (Blue whale)	I	I	1
<u>Balaenoptera physalus</u> (Fin whale)	I and II	I and II	1
<u>Megaptera novaeangliae</u> (Humpback whale)	I	I	1
<u>Balaenidae</u>			
<u>Balaena mysticetus</u> (Bowhead whale)	I	I	1
<u>Eubalaena glacialis</u> (Right whale)	I	I	1
<u>Eubalaena australis</u> (Right whale)	I	I	1
<u>CARNIVORA</u>			
<u>Canidae</u>			
<u>Canis lupus</u> (Gray wolf)	II	II	2*
<u>Vulpes velox hebes</u> (Northern kit fox)	I	I	3
<u>Ursidae</u>			

*The Service has received substantial information on these species too late to be considered in the present notice, but it will be considered in the subsequent findings.

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<u>Ursus arctos</u> (Grizzly & brown bears)	II	II	2*
<u>Ursus (Thalarctos) maritimus</u> (polar bear)	II	II	1
Mustelidae			
<u>Enhydra lustris nereis</u> (Southern sea otter)	I	II	4 and 6
<u>Lutra canadensis</u> (River otter)	II	II	6 and 7*
<u>Mustela nigripes</u> (Black-footed ferret)	I	I	3
Felidae			
<u>Felis concolor coryi</u> (Florida puma)	I	I	3
<u>Felis concolor cougar</u> (Eastern puma)	I	I	3
<u>Felis concolor</u> (Puma)	II	II	3
<u>Lynx canadensis</u> (Lynx)	II	II	7*
<u>Lynx rufus</u> (Bobcat)	II	II	7
<u>Felis pardalis</u> (Ocelot)	I	I	7
<u>Felis wiedii</u> (Margay)	I	I	7
<u>Felis yagouaroundi cacomitli</u> (Jaguarundi)	I	I	7
<u>Felis yagouaroundi tolteca</u> (Jaguarundi)	I	I	7
<u>Panthera onca</u> (Jaguar)	I	I	7

*The Service has received substantial information on this species too late to be considered in the present notice, but it will be considered in the subsequent findings.

Otariidae

<u>Arctocephalus townsendi</u> (Guadalupe fur seal)	II	II	3
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Phocidae

<u>Mirounga angustirostris</u> (Northern elephant seal)	I	0	4 and 5
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<u>Monachus tropicalis</u> (West Indian monk seal)	I	0	4
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<u>Monachus schauinslandi</u> (Hawaiian monk seal)	I	I	3
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SIRENIA

Dugongidae

<u>Dugong dugon</u> (Dugong)	I	I	1
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Trichechidae

<u>Trichechus manatus</u> (Florida manatee)	I	I	1
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ARTIODACTYLA

Antilocapridae

<u>Antilocapra americana</u> <u>mexicana</u> (Mexican pronghorn)	II	II	3 and 6
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<u>Antilocapra americana</u> <u>sonoriensis</u> (Sonoran pronghorn)	I	I	1
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Bovidae

<u>Ovis canadensis</u> (Bighorn sheep)	II	II	2
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AVES

ANSERIFORMES

Anatidae

<u>Anas diazi</u> (Mexican duck)	I	0	4
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<u>Anas laysanensis</u> (Laysan teal)	I	I	1
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<u>Anas oustaleti</u> (Marianas mallard)	I	I	3
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<u>Anser albifrons gambelli</u> (Tule white-fronted goose)	II	II	7
<u>Branta canadensis leucopareia</u> (Aleutian Canada goose)	I	I	1
<u>Branta sandvicensis</u> (Hawaiian goose)	I	I	1
<u>Cygnus buccinator</u> (Trumpeter swan)	II	II	1
FALCONIFORMES			
Cathartidae			
<u>Gymnogyps californianus</u> (California condor)	I	I	3
Accipitridae			
<u>Accipiter gentilis</u> (Goshawk)	II	II	1
<u>Aquila chrysaetos</u> (Golden eagle)	II	II	2 and 6
<u>Circus cyaneus</u> (Marsh hawk)	II	II	3
<u>Haliaeetus leucocephalus</u> (Bald eagle)	I	I and II	1 and 2
Pandionidae			
<u>Pandion haliaetus</u> (Osprey)	II	II	3
Falconidae			
<u>Falco columbarius</u> (Merlin)	II	II	1
<u>Falco femoralis</u> (Aplomado falcon)	II	II	7
<u>Falco mexicanus</u> (Prairie falcon)	II	II	1
<u>Falco peregrinus</u> (Peregrine falcon)	I	I	1
<u>Falco rusticolus</u> (Gyr falcon)	II	II	1

<u>Falco sparverius</u> (American kestrel)	II	0	4 and 5
<u>Caracara cheriway</u> (Caracara)	II	II	3
GALLIFORMES			
Tetraonidae			
<u>Tympanuchus cupido</u> <u>attwateri</u> (Attwater's greater prairie chicken)	I	I	3
<u>Tympanuchus cupido</u> <u>pinnatus</u> (Greater prairie chicken)	II	0	4
Phasianidae			
<u>Colinus virginianus</u> <u>ridgwayi</u> (Masked bobwhite)	I	I	1
<u>Cyrtonyx montezumae</u> <u>mearnsi</u> (Mearns' quail)	II	II	2
GRUIFORMES			
Gruidae			
<u>Grus americana</u> (Whooping crane)	I	I	3
<u>Grus canadensis pulla</u> (Mississippi sandhill crane)	I	I	3
<u>Grus canadensis pratensis</u> (Florida sandhill crane)	II	II	3
CHARADRIIFORMES			
Scolopacidae			
<u>Numenius borealis</u> (Eskimo curlew)	I	I	3
PSITTACIFORMES			
Psittacidae			
<u>Amazona vittata</u> (Puerto Rican parrot)	I	I	1
<u>Rhynchopsitta pachyrhyncha</u> (Thick-billed parrot)	I	I	1

STRIGIFORMES

Strigidae

<u>Otus nudipes newtoni</u> (Virgin Islands screech owl)	II	II	3
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<u>Nyctea scandiaca</u> (Snowy owl)	II	II	2
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REPTILIA

TESTUDINATA

Emydidae

<u>Clemmys muhlenbergi</u> (Bog turtle)	II	II	7
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Testudinidae

<u>Gopherus agassizii</u> (Gopher tortoise)	II	II	7
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<u>Gopherus berlandieri</u> (Gopher tortoise)	II	II	7
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<u>Gopherus flavomarginatus</u> (Gopher tortoise)	II	II	7
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<u>Gopherus polyphemus</u> (Gopher tortoise)	II	II	7
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<u>Geochelone carbonaria</u> (Red-footed tortoise)	II	II	7
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Cheloniidae

<u>Caretta caretta</u> (Loggerhead sea turtle)	I	I	1
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<u>Chelonia mydas</u> (Green sea turtle)	I	I	1
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<u>Eretmochelys imbricata</u> (Hawksbill sea turtle)	I	I	1
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<u>Lepidochelys kempii</u> (Atlantic ridley sea turtle)	I	I	1
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<u>Lepidochelys olivacea</u> (Olive ridley sea turtle)	I	I	1
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Dermochelyidae

<u>Dermochelys coriacea</u> (Leatherback sea turtle)	I	I	1
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CROCODYLIA
Alligatoridae

<u>Alligator mississippiensis</u> (American alligator)	I	II	4*
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Crocodylidae

<u>Crocodylus novaeguineae</u> <u>mindorensis</u> (Philippine crocodile)	I	I	7
<u>Crocodylus acutus</u> (American crocodile)	II	I (U.S. population) II (other populations)	4 and 5 7
<u>Crocodylus novaeguineae</u> (New Guinea crocodile)	II	II	7
<u>Crocodylus porosus</u> (Saltwater crocodile)	II	II	7

SAURIA
Iguanidae

<u>Iguana iguana</u> (Iguana)	II	II	7
<u>Cyclura cornuta</u> (Ground iguana)	II	II	7
<u>Phrynosoma coronatum</u> <u>blainvillei</u> (San Diego horned lizard)	II	II	7

Teiidae

<u>Cnemidophorus hyperythrus</u> (Orange-throated whiptail lizard)	II	II	7
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Helodermatidae

<u>Heloderma suspectum</u> (Gila monster)	II	II	7
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Varanidae

<u>Varanus indicus</u> (Monitor lizard)	II	II	7
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SERPENTES
Boidae

*The Service has received substantial information on this species too late to be considered in the present notice, but it will be considered in the subsequent findings.

<u>Epicrates inornatus</u> (Puerto Rican boa)	I	I	7
<u>Epicrates monensis</u> (Mona Island boa)	II	II	7
<u>Charina bottae</u> (Rubber boa)	II	II	7
<u>Lichanura trivirgata</u> (Rosy boa)	II	II	7
<u>Candoia carinatus</u> (Pacific island boa)	II	II	7
Colubridae			
<u>Thamnophis couchi</u> <u>hammondi</u> (Two-striped garter snake)	II	II	7
AMPHIBIA			
SALIENTIA			
Bufonidae			
<u>Bufo retiformis</u> (Sonoran green toad)	II	II	7
PISCES			
ACIPENSERIFORMES			
Acipenseridae			
<u>Acipenser brevirostrum</u> (Shortnose sturgeon)	I	I	1
<u>Acipenser oxyrhynchus</u> (Atlantic sturgeon)	I	I	2
<u>Acipenser fulvescens</u> (Lake sturgeon)	II	II	1
SALMONIFORMES			
Salmonidae			
<u>Coregonus alpenae</u> (Longjaw cisco)	I	0	4
CYPRINIFORMES			
Catostomidae			
<u>Chasmistes cujus</u> (Cui-ui)	I	1	3
Cyprinidae			

<u>Plagopterus argentissimus</u> (Woundfin)	II	II	3
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<u>Ptychocheilus lucius</u> (Colorado squawfish)	II	II	3
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PERCIFORMES

Percidae

<u>Stizostedion vitreum</u> <u>glaucum</u> (Blue pike)	I	0	4
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MOLLUSCA

NAIADOIDA

Unionidae

<u>Conradilla caelata</u> (Birdwing pearly mussel)	I	I	7
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<u>Cyprogenia aberti</u> (Edible pearly mussel)	II	II	7
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<u>Dromus dromas</u> (Dromedary pearly mussel)	I	I	3
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<u>Epioblasma (=Dysnomia)</u> <u>florentina curtisi</u> (Curtis' pearly mussel)	I	I	7
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<u>Epioblasma (=Dysnomia)</u> <u>florentina florentina</u> (Yellow-blossom pearly mussel)	I	0	4
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<u>Epioblasma (=Dysnomia)</u> <u>sampsoni</u> (Sampson's pearly mussel)	I	0	4
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<u>Epioblasma (=Dysnomia)</u> <u>sulcata perobliqua</u> (White cat's paw mussel)	I	I	7
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<u>Epioblasma (=Dysnomia)</u> <u>torulosa gubernaculum</u> (Green-blossom pearly mussel)	I	I	7
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<u>Epioblasma (=Dysnomia)</u> <u>torulosa rangiana</u> (Tan-blossom pearly mussel)	II	II	7
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<u>Epioblasma (=Dysnomia)</u> <u>torulosa torulosa</u> (Tuberculed-blossom pearly mussel)	I	I	7
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<u>Epioblasma (=Dysnomia)</u> <u>turgidula</u> (Turgid-blossom pearly mussel)	I	I	7
<u>Epioblasma (=Dysnomia)</u> <u>walkeri</u> (Brown-blossom pearly mussel)	I	I	7
<u>Fusconaia cuneolus</u> (Fine-rayed pigtoe mussel)	I	I	7
<u>Fusconaia edgariana</u> (Shiny pigtoe mussel)	I	I	7
<u>Fusconaia subrotunda</u> (Long solid mussel)	II	II	7
<u>Lampsilis brevicula</u> (Ozark lamp pearly mussel)	II	II	7
<u>Lampsilis higginsii</u> (Higgins eye mussel)	I	I	7
<u>Lampsilis orbiculata</u> <u>orbiculata</u> (Pink mucket mussel)	I	I	7
<u>Lampsilis satura</u> (Plain pocketbook mussel)	I	I	7
<u>Lampsilis virescens</u> (Alabama lamp pearly mussel)	I	I	7
<u>Lexingtonia dolabelloides</u> (Slab-sided pearly mussel)	II	II	7
<u>Pleorobema clava</u> (Club pearly mussel)	II	II	7
<u>Plethobasis cicatricosus</u> (White wartyback mussel)	I	I	7
<u>Plethobasis cooperianus</u> (Orange-footed pimpleback mussel)	I	I	7
<u>Pleurobema plenum</u> (Rough pigtoe mussel)	I	I	7
<u>Potamilus capax</u> (Fat pocketbook mussel)	I	I	7

<u>Quadrula intermedia</u> (Cumberland monkey face mussel)	I	I	7
<u>Quadrula sparsa</u> (Appalachian monkey face mussel)	I	I	7
<u>Toxolasma (=Carunculata) cylindrella</u> (Pale lilliput pearly mussel)	I	I	7
<u>Villosa (=Micromya) trabilis</u> (Cumberland bean mussel)	I	I	7

Key to bases for recommendations: (1) Available biological and trade information indicates the species is now appropriately listed because of its biological and international trade status; (2) available biological and trade information does not meet requirements to effect a change under the criteria, but it suggests the species should be reclassified because of its biological status; (3) available biological and trade information does not meet requirements to effect a change under the criteria, but it suggests the species should be reclassified because of its trade status; (4) available biological and trade information meets the criteria to indicate the species should be reclassified because of its biological status; (5) available biological and trade information meets the criteria to indicate the species should be reclassified because of its trade status; (6) available biological and trade information indicates the species should be listed because of its similarity in appearance to other listed species, subspecies or populations of the same species; and (7) available biological and trade information does not meet requirements of the criteria to effect a change and it does not suggest the species should be reclassified.

The reasons for the preliminary findings presented in this table are explained below. Discussions of species are grouped according to the basis for the recommended listing.

(1) Species for which the available biological and trade information indicate that they are now appropriately listed because of their biological and trade status.

There are 12 mammals, 13 birds, 6 reptiles, and 2 fishes, or 33 of the 134 listed native species that appear to fit this category, according to information examined by the Service. This information on present and historical abundance and range of geographic distribution, and on the extent of international trade appears sufficient to warrant the current listings of these species in the appendices. There is actual or potential trade in each species, and each is currently (Appendix I) or potentially (Appendix II) threatened with extinction according to the most recent data.

The mammals recommended for retention in their current listings on this basis include the whales, polar bear, dugong, and manatee.

Among the species of birds recommended for retention in their current listings on the basis that they fit the criteria are several raptors. The bald eagle in most of the 48 conterminous United States is reduced in abundance to the extent that it qualifies for Appendix I, but populations in Canada and Alaska are not currently threatened with extinction (see discussion below). The Convention provides that

geographically separate populations of a biological species or subspecies may be treated as separate "species" for purpose of control, provided they are listed as such in the appendices.

The Prairie falcon, merlin, gyrfalcon and goshawk are commonly used in falconry. Information on their abundance is either slight or conflicting, but the high potential for trade indicates they should be retained on Appendix II.

The decline of the peregrine falcon in Europe and North America has been closely studied, and is linked to pesticides. Recent surveys throughout much of North America found that at best the decline has slowed or stopped, but in many places the breeding rate was continuing to drop. Banding studies and counts of migratory hawks indicate increase but so far do not provide statistically sufficient data for analysis. If populations were at normal levels, the demand for falconry birds might be insignificant relative to the total population. Because of their reduced present level, any trade needs to be strictly controlled.

All of the listed sea turtles are recommended to remain in Appendix I because population trends indicate rapid declines, some of the species have very low breeding populations, and the commercial harvest of adults and destruction of nests are continuing threats to their survival.

(2) Species for which the available biological and trade information does not meet requirements of the criteria to effect a change, but suggests that the species should be reclassified because of its biological status.

The criteria for deletion of a species from Appendix I or II, or transfer from Appendix I to Appendix II, require scientific evidence of population size and trend showing recovery of the species and an analysis of the potential for commercial trade. The criteria for deletion of a species from the appendices or its transfer from Appendix I to Appendix II are more rigorous than those for addition of a species because the Parties recognized that prematurely reducing the protection afforded a species could result in permanent loss of the resource. Errors in listing, if any, were to favor the wildlife or plant rather than its exploitation. The basic test for such transfer or deletions is whether or not the species can withstand the exploitation that would follow this reduction or loss of protection. There are 3 mammals, 4 birds and 1 fish among the listed native species for which the data show substantial populations, but these data do not meet the requirements of the criteria for deletion or transfer from Appendix I to Appendix II. It appears that if more complete information on the biological status of these species becomes available, it

might be appropriate to effect such changes, in light of our current knowledge of international trade in them.

While the natural range of the Atlantic sturgeon apparently has been severely limited, this fish has been reported in numbers sufficient not to be considered currently threatened with extinction.

Trophy hunting of the bighorn sheep continues in the United States, Canada, and Mexico with little knowledge of the recovery rate of this species. Its range has been greatly reduced and the current population has been reported at no more than 18,000 to 20,000, down from an estimated 1.5 million to 2 million in the last century. New herds have been introduced into many areas to re-establish the species and in some instances these introductions have been successful. Habitat protection is the basic need because, except for a few fragments that have escaped overgrazing by domestic livestock, the habitat of the bighorn has been destroyed.

Reported increasing in population in the United States, the Mearns quail has recovered sufficiently in part of its range to withstand controlled hunting, but the status is unknown over the greater part of its range in Mexico.

The Alaskan and Canadian grizzly or brown bears continue to be taken by trophy hunters from various parts of the world. The pelt of the gray wolf is extremely warm and used in the manufacture of cold weather clothing. Substantial populations of both species occur in Alaska and Canada. While current biological data are not complete on these species, the Service has received substantial information on these animals too late to be considered in the present notice, but it will be included in the subsequent findings.

The golden eagle is a widespread species, of which the United States populations do not appear to be potentially threatened with extinction in spite of persecution and some utilization for falconry, taxidermy and feathers. However, it is very difficult to distinguish U.S. specimens from specimens entering international trade from other countries where the species requires strict protection.

The snowy owl is periodically abundant in Alaska and Canada, and is frequently sighted in northern parts of the 48 conterminous United States during those periods of abundance farther north. The bird does not appear to be potentially threatened with extinction, although accurate population data are unavailable. Trade appears to be limited to taxidermy and local use for food.

(3) Species for which the available biological and trade information does not meet requirements of the criteria to effect a change, but suggests that

the species should be reclassified because of its trade status.

There are 9 mammals, 11 birds, 3 fishes, and 1 mollusc or 24 of the 134 listed native species for which no positive evidence of current national or international trade is available. In addition, each of these species is protected under state or Federal law, which greatly reduces the potential for trade. Knowledge of the present and historical abundance and geographic range is variable and in no case does it appear to meet the requirements of the criteria for deletion or transfer of a species from Appendix II. However, the lack of evidence for, and unlikelihood of, trade in these species suggests that their listing in the appendices serves no useful purpose in a Convention intended to regulate international movement of wildlife and plants. Any reduction in protection afforded by the Convention is not expected to harm these species.

The puma, for example, is widespread in distribution although it has been extirpated in many of the settled portions of North America and two subspecies are threatened with extinction. The species still persists in wilder regions of the New World, and is regularly sport-hunted in the western states except California, and in Mexico and central and South America. The species appears to be adequately managed for a sustained sport harvest in certain western states, but there has been a general decline in its abundance. The potential for international trade in the puma is slight and is unlikely to present a threat to its survival.

The marsh hawk is apparently numerous in the United States wherever suitable marshland is available. The U.S. Fish and Wildlife Service Breeding Bird Survey shows this species has declined 5 percent per year over the past 10 years, but numbers of individuals are still large. There is little likelihood of trade; the species is unimportant in falconry. Current information on the biological and trade status of the bird thus suggests it should not be listed in Appendix II, but this information does not meet the requirements of the criteria for deletion.

(4) Species for which the available biological and trade information meets the criteria to indicate they should be reclassified because of their biological status.

Biological status alone is not sufficient to effect a change in listing under the criteria; it must be considered along with trade status to evaluate the impact that any reclassification might have on the species. However, for some species it is biological status, rather than trade status, that primarily indicates the need for reclassification.

This survey indicates that there are 3 mammals, 3 birds, 2 reptiles, 2 fishes

and 2 mussels for which the information on biological status appears sufficient to effect a change in the listing, given what is known about trade status. Certain of these species are believed to be extinct since no living specimens have been found after many years of searching. The criteria do not specifically address this situation, but it is clear that the listing of the species is not appropriate in view of the fundamental principles of the Convention.

The West Indian monk seal, the longjaw cisco and the blue pike of the Great Lakes, and the yellow-blossom and Sampson's pearly mussels fit this category of apparent extinction as no specimens have been found in recent years. For example, no living specimen of the longjaw cisco has been seen since 1952.

The Mexican duck has recently been reclassified as a subspecies of the mallard duck (*Anas platyrhynchos*); current nomenclature for this subspecies is *Anas platyrhynchos diazi*. The U.S. population of *diazi*-like ducks contains only about 10% pure individuals. Recent surveys in Mexico indicate the taxon is secure there.

There currently appears to be no potential trade in the northern elephant seal, and its population is increasing under protective measures.

The greater prairie chicken has recovered in such numbers that it may now be taken legally by hunters within parts of its range.

A reported 46 percent increase between 1970 and 1974 enlarged the total U.S. population of American alligators to almost 750,000 individuals. This species should, therefore, no longer be considered as currently threatened with extinction.

Surveys report the U.S. population of the American kestrel to exceed 300,000 individuals. The U.S. Fish and Wildlife Service Breeding Bird Survey shows it to have increased in abundance in the United States over the past 10 years. The species is widespread throughout North and South America. While there is limited local use of this species for falconry it cannot be considered as endangered or in significant international trade.

There are only 200-400 known individuals of the American crocodile in the United States. Furthermore, respondents suggest this population has only 25 known breeding females and practically no current survival of the hatchlings. The United States population of this species should be placed in Appendix I to receive the protection afforded a species threatened with extinction, for which there is a high risk that specimens could illegally enter the extensive trade in crocodilian hides. The biological status of other populations of this species in the Caribbean and Mexico is poorly known,

and they should be retained in Appendix II.

(5) Species for which the available biological and trade information meets the criteria to indicate they should be reclassified because of their trade status.

There are a mammal, a bird and a reptile among the listed species for which the information on present and historical abundance and range of geographic distribution, and on the extent of international trade appears sufficient to warrant reclassification. When it is suggested that a species should be reclassified because of trade status, this means that trade status, rather than biological status, primarily indicates the need for reclassification. However, trade status alone is not sufficient to effect a change in listing under the criteria.

The northern elephant seal, for example, is completely protected from trade in the United States under Federal law, and its population has made a well-documented recovery in recent years. Current information indicates that it is not threatened with extinction, and that there is little likelihood of trade to justify retaining it in the appendices.

(6) Species for which the available biological and trade information indicates they should be listed because of similarity in appearance to other listed species, subspecies or geographically separate populations of the same species.

The fundamental principles of the Convention provide that species may be listed in Appendix II, subjecting them to regulation in order that trade in other species meeting the biological and trade criteria may be brought under effective control. The reason is that it can be difficult to distinguish between a species needing protection and a close relative that does not need protection, especially if the specimen is a part or derivative. There are three mammals and a bird among the listed native species that qualify for listing on this basis. They are difficult for persons trained in wildlife identification to distinguish from other listed species, subspecies or geographically separate populations of the same species.

The southern sea otter, which has recovered in abundance and is protected from trade by state and Federal law, so closely resembles the northern sea otter when processed as a pelt that it should be retained in Appendix II.

The pelt of the river otter likewise is very difficult to distinguish from that of other species of otters that are currently or potentially threatened with extinction. This is one basis for recommending that the otter be retained in Appendix II; another basis for its proposed retention is discussed below.

The Mexican subspecies of the pronghorn exists in sufficient numbers

to be subject to controlled hunting in the U.S. Trophy specimens of the Mexican pronghorn closely resemble those of the Sonoran pronghorn, which is treated with extinction and listed in Appendix I.

(7) Species for which the available biological and trade information does not meet requirements of the criteria to effect a change and does not suggest the species should be reclassified.

This survey confirmed that there are a number of species listed in the appendices about which very little is known. The available information on population size and trends, or on the extent of international trade in certain of these species is so incomplete that it is very difficult to determine if they should be retained in their current listing or if they should be reclassified or deleted from the appendices. If they were not now listed, it is doubtful that many of these species would meet the current criteria for addition to Appendices I and II. This finding applies to 8 mammals, 4 birds, 21 reptiles, 1 amphibian and 30 molluscs, or 64 of the 134 listed species. There is evidence of substantial trade in some of these species, but little indication of the impact it has on the survival of wild populations. The criteria emphasize that deletion or transfer from Appendix I to Appendix II should require scientific evidence of population size and trend showing recovery of the species and an analysis of the potential for commercial trade, showing that the species could withstand the exploitation resulting from a reduction of protection afforded by the Convention.

The secretive nature of the wild cats has made it difficult to determine their biological status. Many of them are heavily hunted for their pelts and there is little information on population levels or on recovery rates of exploited population.

Information on the population biology of the bobcat is fragmentary, despite a number of recent studies to determine the status of this species. Information from various sources indicates that substantial numbers of bobcats occur in the United States, and that the species occupies much of its original geographic range. However, it is easily trapped and the market value of its fur has increased greatly in the last few years. The effect of the expected increase in trapping on populations cannot be predicted with any certainty. The basis for listing species of the family Felidae in Appendix was as follows. "All cats are potentially involved in the fur trade, and the scale of this trade is such that all species must be considered as vulnerable, few populations now remaining unaffected. All wild species not in Appendix I should be on Appendix II, so that the scale of their occurrence in trade can

be monitored." Given our current knowledge of this species and the basis for its inclusion in the appendices, the Service recommends that it be kept in Appendix II to aid in monitoring and that the listing be annotated to indicate this. Otherwise, it might be appropriate to transfer this species to Appendix III, where exports could be monitored without necessarily placing limits on the quantity of pelts that are shipped until the impact of trade is known.

The lynx was listed in Appendix II for the same reason as the bobcat. The species is in high demand for its pelts, and its abundance is poorly documented except in a few localities. Lynx have cycles of abundance and scarcity linked to abundance of the snowshoe hare, and it is possible that heavy trapping of lynx in a period of scarcity could harm their populations. Evidence is inadequate to determine if international trade in this species should be controlled. The Service has received substantial information on the lynx too late to be considered in the present notice, but it will be considered in the subsequent findings.

The river otter is found and harvested in many areas of the United States and Canada, but knowledge of its population biology and the impact of the fur trade is very incomplete. As with the bobcat, studies are underway to clarify its status in parts of the United States. This species was listed along with others of its subfamily because of heavy fur trade and similarity in appearance among the pelts of different species. The Service has also received substantial information on this species too late to be considered in the present notice.

The Tule white-fronted goose also fits this situation. There is little information on its population, aside from the general knowledge that it is small. The potential for trade is low and would most likely involve hunting and aviculture.

The Sonoran toad is a species for which there are no population data and no evidence of international trade although there might be some potential for pet trade.

Many of the listed reptiles are known to be subject to trade: crocodilians, boas, and monitor lizards for their skins; tortoises, lizards and snakes for use as pets. This trade is extensive, but its impact on the survival of the wildlife populations is poorly known. There is little reliable information on past or present population levels or on changes in geographic ranges of distribution of these species.

The numerous species and subspecies of freshwater mussels listed in the appendices are known to have small ranges of distribution and low population sizes, but there are few well-documented population surveys. Fresh-

water mussels are commercially harvested for their shells, which are exported, and some of the listed species are likely to be harvested along with other more abundant species. However, there are no data on the extent to which the listed species are included in commercial harvests.

This survey of native species is being conducted to determine if the species are appropriately listed, given the criteria adopted by the Party nations. It is evident that certain of the listed species do not benefit from inclusion in Appendix I or II, and that the criteria for deletion or transfer prevent some appropriate changes from being made. Therefore, the Service is considering the possibility of proposing not only changes in the listings of certain species, but also changes in the criteria that would allow the Parties to develop appendices that reflect the best available biological and trade information.

The Service welcomes additional information and comments that will assist in evaluating these preliminary findings and the criteria, and in preparing appropriate proposals to amend the appendices. All materials that are received will be available for public inspection from 7:45 a.m. to 4:15 p.m., Monday through Friday, in Room 546, 1717 H Street NW., Washington, D.C.

PUBLIC MEETING

In addition to considering all written comments, received by July 3, 1978, the Fish and Wildlife Service will hold a public meeting on the issues discussed in this advance notice of proposed rulemaking. The public meeting will be conducted from 9 a.m. to 12 noon on May 31, 1978, in the Secret Service Auditorium, located on the first floor of the Matomic Building, 1717 H Street NW., Washington, D.C.

So that adequate time may be allocated for the views of all interested parties, those planning to attend the public meeting are encouraged to notify Ms. Joan Caton, Chief, Management Operations Branch, Federal Wildlife Permit Office, Washington, D.C. 20240, 202-632-8796, of their participation not later than Friday, May 19, 1978.

The primary author of this notice is Dr. Richard L. Jachowski, Federal Wildlife Permit Office.

NOTE.—The Department of the Interior has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

Dated: April 28, 1978.

HARVEY K. NELSON,
Acting Director,
Fish and Wildlife Service.

[FR Doc. 78-12205 Filed 5-2-78; 8:45 am]

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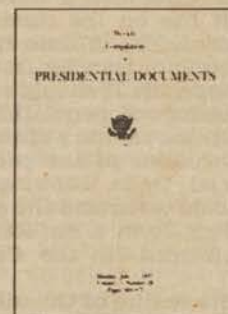
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